

The balance sheet reflects a net worth of \$281,348.38. However, the assets include an item of \$1,907.90 for "Organization Expense." This corporation was organized shortly after the organization of Willys Distributors, Inc. on July 18, 1945. In view of the amount of declared dividends, the surplus carried over from prior years, and the profit made in the year ending June 30, 1950, it would appear that the expenses of organization should have been written off completely by October, 1960. Accordingly, the amount of \$1,907.90 will be considered an item of expense rather than an asset, reducing the net worth of the enterprise to \$279,440.48.

From the evidence of record, the Commission finds the book value as thus calculated to be the most appropriate measure of the value of the corporation at the time of loss. Therefore, the value at the time of loss for each of the 2,205 shares of outstanding capital stock was \$126.73 and the value of claimant's interest based upon his ownership of 1,281 shares was \$162,341.13. The Commission concludes that claimant suffered a loss in that amount on October 24, 1960 when the corporation was nationalized by the Government of Cuba, within the meaning of Title V of the Act.

As in the previous instance, claimant suffered an additional loss for dividends declared but not paid. The amount of dividends declared was \$10.00 per share and as the owner of 1,281 shares, claimant was owed \$12,810.00. This represents a debt of a nationalized enterprise and an additional loss suffered by claimant on October 24, 1960 within the meaning of Title V of the Act, and making a total loss for this enterprise in the amount of \$175,151.13.

3. *Sociedad Inmobiliaria Raritan*

Claimant asserts a loss in the amount of \$431,213.19 for his ownership interest in Sociedad Inmobiliaria Raritan, a Cuban corporation organized in 1945. The Commission finds that claimant owned 1,023 of the 1,310 shares of stock outstanding of this corporation on September 13, 1961 when it was nationalized by the Government of Cuba under Law 890. Claimant has submitted a balance sheet as of December 31, 1959, the most recent available, which reflects the following:

<i>Assets</i>			
<i>Current Assets</i>			
Cash in Banks	\$	585.18	
Rents Receivable		21,140.00	
Other Accounts Receivable		871.34	
Guaranty Deposits		450.00	\$ 23,046.52
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<i>Fixed Assets</i>			
Land Properties		\$132,623.38	
Buildings less accrued reserve of \$56,587.58		133,518.63	
Furniture and Fixtures less reserve of \$1,974.34		1.00	266,143.01
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<i>Deferred Charges</i>			
Insurance paid in advance	\$	844.92	
Taxes paid in advance		310.51	1,155.43
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			<u>\$290,344.96</u>

Liabilities

Current Liabilities		
Accounts Payable	\$ 4,796.26	
Accrued Taxes Payable	10,910.39	\$ 15,706.65
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Capital:		
Authorized Capital \$500,000.00		
Capital Issued	\$149,800.00	
Less : Shares held on hand which have not been paid	18,800.00	131,000.00
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Surplus:		
Net Surplus as of December 31, 1959		143,638.31
		<u>\$290,344.96</u>

The net worth of the enterprise as calculated from this balance sheet would be \$274,638.31. Claimant contends, however, that the fixed assets, reported at cost less depreciation, are greatly undervalued in the balance sheet. The principal assets of the corporation were two commercial buildings, one located at 23rd and O Streets in the Vedado section of Havana, and the other near the Cabaret Sans Souci in the suburban section of Marianao. The area of the land at 23rd and O Streets is 2,964.75 square meters. In an affidavit, claimant states that on the basis of his knowledge of the value of real estate in the vicinity, this land was worth \$100.00 per square meter in 1959. Claimant's legal counsel in Cuba states in an affidavit that he was familiar with the property and has direct knowledge of other real estate transactions in that neighborhood, and values the land at \$100.00 per square meter. In view of this evidence and considering the location of the property (less than one block from the Hotel Nacional), the Commission finds that the value of the land at 23rd and O Streets was \$296,475.00. In their affidavits, claimant and his Cuban counsel value the other land in Marianao, which measured 7,500 square meters, at \$15.00 per square meter. This amount appearing reasonable in view of the location and other evidence available to the Commission concerning land values in the vicinity, the Commission finds that the land in Marianao was worth \$112,500.00, for a total value for the land properties of \$408,975.00.

Claimant also includes a value of \$1,500.00 for furniture and fixtures in his calculation of the value of the corporation, but submits no evidence in support thereof. The data submitted by claimant supporting the balance sheet of December 31, 1959 includes Exhibit 31A7, which contains the statement - "At present the Company does not have any furniture." Accordingly, no change is made in the balance sheet figure in this respect. No claim is made for a valuation for the buildings higher than that shown on the balance sheet.

Having found that the land owned by the corporation was worth a total of \$408,975.00, an increase of \$276,351.62 over the balance sheet figure, the Commission finds that the value of this corporation at the time of taking was \$550,989.93, or \$420.603 per share of the 1,310 shares of stock outstanding, and that the value of claimant's 1,023 shares was \$430,276.87. The Commission concludes that claimant suffered a loss in that amount on September 13, 1961 within the meaning of Title V of the Act.

4. *Powe Machinery Company, S.A.*

The Commission finds that claimant was the owner of 2,432 shares of 2,500 outstanding shares of stock in this corporation which represented Caterpillar Tractor Company, Deere & Company, and other American manufacturers in the western half of Cuba. The enterprise was organized in Cuba and was nationalized by the Government of Cuba under Resolution No. 3 issued pursuant to Law No. 851 on October 24, 1960. A loss in the amount of \$3,544,323.84 is asserted and in support thereof, a certified balance sheet as of June 30, 1960 was submitted which reflects the following:

<i>Assets</i>		
Current Assets		
Cash (including bank deposit to guarantee Letters of Credit \$83,265.00)	\$ 378,895.20	
Notes and Accounts Receivable Customers (less allowance of \$50,000.00 for doubtful accounts)	1,283,632.64	
Commissions Receivable on direct sales	30,327.82	
Officers and Employees	26,157.64	
Other	16,112.25	
Due from Powe Equipment Co., S.A.	12,240.40	
Inventories, at Cost or Less, not in excess of market		
General Merchandise	332,267.12	
Spare Parts	361,525.78	
In Transit	5,612.27	\$2,446,771.12
Loans Receivable from Contratos Mobiliarios Crema, S.A.—7% Unsecured—Due 2/20/65		173,000.00
Capital Assets, at Cost		
Land and Buildings	\$ 581,533.93	
Furniture & Fixtures & Other Equipment	235,482.07	
	871,016.00	
Less Accumulated Depreciation	82,196.60	734,819.40
Other Assets & Deferred Charges		
Receivable from Sociedad de Inversiones La Loma	\$ 80,692.71	
Prepaid Insurance	7,898.11	
Advances to Employees for Expenses	2,734.46	
Miscellaneous	12,845.45	104,170.73
		\$3,458,761.25

Liabilities and Capital

Current Liabilities		
Accounts Payable	\$ 16,647.86	
Officers & Employees	21,023.91	
Customers' Credit Balances	17,609.27	
Other	59,664.04	\$ 114,945.08
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Accrued Liabilities		62,782.28
Accrued Taxes		9,904.77
Long Term Debt, Installments due within one year		36,000.00
Long Term Debt—6% First Mortgage	\$ 250,000.00	
Less Installments due within one year	36,000.00	214,000.00
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Deferred Gross Profit on Installment Accounts		54,498.06
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		\$ 492,130.19
Capital Stock and Surplus		
Authorized, 4,500 shares of \$1,000 par value each; Issued and Outstanding, 2,500 shares	\$2,500,000.00	
Earned Surplus	466,631.06	2,966,631.06
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		\$3,458,761.25
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Claimant urges an upward adjustment of the Earned Surplus figure on the ground that during the year ending June 30, 1960 the accounts receivable total had been reduced by \$560,086.25 which was written off as bad debts. In an affidavit, claimant explains that this charge-off would not normally have been made, but was done to reduce exorbitant taxes imposed by the Cuban Government, and because the debtors were enterprises which recently had been nationalized; and the company did not wish to pay taxes on money which was owed to it by the Government of Cuba. From a detailed profit and loss statement for the year ending June 30, 1960, it is apparent that the surplus balance at the beginning of that period was \$694,217.60; that operations for the year resulted in a net loss of \$227,586.54, which reduced the surplus to the \$466,631.06 shown on the balance sheet; and that the reason for the net loss was the writing off of \$560,086.55 as bad debts, without which the year's operations would have shown a net profit of \$332,500.01, increasing the surplus account to \$1,026,717.61.

In addition, the record includes an unaudited balance sheet as of August 31, 1960, which was delivered by an officer of the company to the American Embassy in Havana when nationalization appeared imminent. The only significant difference in the two balance sheets is the addition of \$116,704.68 to the July 1, 1960 earned surplus balance of \$466,631.06, increasing the surplus to \$583,335.74. This increase represented profits earned during the months of July and August 1960, and is supported by a detailed profit and loss statement for that period.

The Commission is of the opinion that the surplus account should be in-

creased to \$1,143,422.29, in view of the debt write-off and the profits for July and August of 1960. On the other hand, a downward adjustment will be made in one of the asset items. The June 30, 1960 balance sheet shows the sum of \$12,240.40 due from the Powe Equipment Company, S.A. A balance sheet of the same date for Powe Equipment Company (discussed below) shows as a liability the sum of \$10,719.05 owed to Powe Machinery Company, S.A. Claimant being unable to reconcile the difference, the Commission will substitute the smaller figure in the balance sheet of Powe Machinery Company for June 30, 1960, reducing the asset total by \$1,521.35. This reduces the surplus account to \$1,141,900.94 and provides a total net worth of \$3,641,900.94, which the Commission determines to have been the value of the corporation at the time of loss. The value for each share of the 2,500 shares outstanding was therefore \$1,456.76, and the value of claimant's 2,432 shares was \$3,542,840.32. The Commission concludes that claimants suffered a loss in that amount as a result of the nationalization of the corporation by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act.

5. *Powe Equipment Company, S.A.*

This company was the counterpart of the Powe Machinery Company, S.A. and represented Caterpillar Tractor Company, Deere & Company and other American manufacturers in the eastern half of Cuba. The Commission finds that this corporation was nationalized by the Government of Cuba on October 24, 1960 under Resolution No. 3 pursuant to Law No. 851. Claimant asserts a loss in the amount of \$2,658,036.69 based upon his ownership of 1,394 of the 1,450 shares of stock outstanding.

Claimant has submitted a certified balance sheet for the corporation as of June 30, 1960 which shows an asset total (including \$6,863.64 for Un-amortized Organization Expense) of \$2,854,274.56, a liability total of \$276,892.76, and a net worth of \$2,577,381.80 (capital stock \$1,450,000.00, and surplus \$1,127,381.80, including \$200,000.00 designated as Reserve for Contingencies). In his evaluation of the corporation, claimant relies upon a document dated November 2, 1960, executed when the administrator designated by the Cuban Government took control of the enterprise. According to this document, the firm had an authorized capital of \$4,500,000.00 (with \$3,050,000.00 not issued), current assets of \$2,406,698.40, fixed assets of \$497,774.86, other assets of \$205,528.54, total assets of \$3,110,002.00, liabilities of \$345,186.39, a surplus of \$1,314,815.81 and a liquid capital of \$2,764,815.81. The document further reveals that the outgoing administrator declared the latest balance sheet to be dated September 30, 1960 and to reflect the situation as of October 25, 1960 when the records and files were sealed and the doors of the building sealed to await the appointment of a new administrator.

Material made available to the Commission from the files of the Department of State includes a balance sheet for Powe Equipment Company, S.A. as of September 30, 1960, as follows:

Assets

Current Assets:

Cash			\$369,695.72	
Accounts Receivable, Customers	\$356,356.70			
Less: Reserve for doubtful accounts	50,000.00		306,356.70	
Notes Receivable			231,274.44	
Other Receivable:				
Commissions Receivable	\$180,959.23			
Others	15,696.64		196,655.97	
Foreign Suppliers Debit Balance			92.93	
Officers and Employees' Debit Balances			67,843.91	
Inventories:				
Machinery	\$434,805.11			
Parts	535,391.56		\$970,196.67	
Merchandise in Transit Foreign Suppliers Purchase Agreement Merchandise Purchase Orders Guarantees			8,643.74 36,690.82 100,810.81	
Banks Guaranty Deposits			100,661.63	
Work in Process			1,709.47	
Advanced Custom Duties			985.02	
Miscellaneous Prepaid			15,080.67	\$2,406,698.40

	<i>Original Value</i>	<i>Depreciation Accrued</i>	<i>Book Value</i>	
Fixed Assets:				
Land	\$ 77,202.30	\$ —	\$ 77,202.30	
Buildings	288,231.20	2,161.71	286,069.49	
Furniture and Fixtures	108,233.11	40,514.53	67,718.58	
Automobile and Trucks	27,932.22	20,013.45	7,918.77	
Shop Equipment	54,662.07	13,216.71	41,445.36	
Tools	3,342.64		3,342.64	
	\$559,603.54	\$ 75,906.40	\$483,697.14	
Patents	20,000.00	5,922.28	14,077.72	497,774.86

Other Assets:

Guaranty Deposits	\$ 1,050.00		
Cash Surrender Value of Life Insurance	2,420.00		
Contratos Mobiliarios Cremo, S.A.	195,000.00		198,470.00

Deferred Charges:

Organization Expenses	\$ 6,618.51		
Traveling Expense Advances	440.43		7,058.94

\$3,110,002.20

*Liabilities**Current Liabilities:*

Accounts Payable:

Foreign Suppliers	\$ 23,667.17	
Local Suppliers	2,154.33	\$ 25,821.50

Notes Payable:

Promissory Notes	\$ 36,690.82	
Credit Letters	100,810.81	137,501.63

Other Payable:

Powe Machinery Co., S.A.		
Current Account	\$ 15,657.95	
Others	6,166.23	21,824.18

Customers' Credit Balances		20,886.52
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Officers and Employees'

Credit Balances		9,200.12
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Accrued Taxes, Insurance,

Commissions and others		43,743.63
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Profit Tax		39,903.03	\$ 298,880.61
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Deferred Credits:

Gross Profits Deferred on Installment Sales		\$ 46,305.78
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Capital Stock and Surplus:

Capital Stock:

Authorized 4,500 shares of \$1,000 par value	\$4,500,000.00	
Less: Not Issued	3,050,000.00	\$1,450,000.00

Surplus:

Reserve for Contingencies		200,000.00
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Earned Surplus Balance

July 1, 1960	\$ 927,381.80	
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Profit up to

September 1, 1960	187,434.00	1,114,815.81	2,764,815.81
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\$3,110,002.20

It will be noted that the balance sheet of September 30, 1960 is in agreement with the document of November 2, 1960 submitted by claimant except for an apparent typographical error in the latter for "other assets" (\$205,528.54 instead of \$205,528.94), and an arithmetical error in the November document's totalling of assets. With corrections for these items, both documents indicate a net worth for the corporation of \$2,764,815.81. The sum of \$6,618.51 for Organization Expenses, however, is included among the assets in the balance sheet of September 30, 1960. The corporation was organized on December 12, 1951 and the Commission is of the opinion that the expenses of organization should have been written off by September 30, 1960, in view of the profit, earned surplus, and reserve for contingencies items in the balance sheets. Accordingly, the amount of \$6,618.51 will be considered as an item of expense rather than an asset, reducing the net worth to \$2,758,197.30.

The Commission finds that the value of the corporation at the time of loss was \$2,758,197.30 or \$1,902.205 for each of the 1,450 shares of stock outstanding. The Commission concludes that claimant, as the owner of 1,394 shares of this stock suffered a loss in the amount of \$2,651,673.77 on October

24, 1960 as a result of the taking of the corporation by the Government of Cuba, within the meaning of the Act.

6. *Pioneer Trading, S.A.*

The Commission finds that this corporation was organized on October 31, 1958 for the purpose of acquiring from Powe Equipment Company, S.A. used equipment, which had been traded in for new equipment, and repairing and reselling such equipment. The authorized capital was \$1,000,000.00 in 10,000 shares of \$100.00 each, but only 1,000 shares were issued. Claimant was the owner of 985 shares which he purchased for \$98,500.00. The sum of \$100,000.00 received from the sale of the stock was deposited in Banco Continental Cubana to the account of Pioneer Trading, S.A.

Because of the political climate, the enterprise did not commence operations and no part of the bank deposit was used or withdrawn. On February 23, 1961, the enterprise was intervened by Resolution No. 61-262 of the National Institute of Agrarian Reform, and the appointed Intervenor notified Banco Continental Cubana and took over the \$100,000.00 deposit.

The Commission finds that the value of claimant's interest in the corporation was \$98,500.00 and concludes that he suffered a loss in that amount upon the intervention of the firm by the Government of Cuba on February 23, 1961, within the meaning of Title V of the Act.

7. *Cuban American Metals Distributors, Inc.*

The Commission finds that this corporation, organized on March 24, 1950 for the purpose of selling the products of the Aluminum Company of America in Cuba, was intervened by the Government of Cuba on August 16, 1960. Claimant asserts a loss in the amount of \$55,943.16 based upon his ownership of 188 shares of the 1,881 outstanding shares of that enterprise.

The record for this enterprise contains material submitted by claimant and files made available to the Commission by the Department of State. The amount of loss asserted by claimant herein is based upon statements by the Chairman of the Board and the Vice-President of the firm who base their assessments upon the total assets including an amount for good will and for profit which the future sale of the inventory would have produced. Balance sheets for the corporation as of December 31, 1959, June 30, 1960 and July 30, 1960 do not contain any entry for good will or prospective profits.

Included in the material from the Department of State files in addition to the balance sheets for June 30, 1960 and July 30, 1960 are a physical inventory of the company's assets made at the time of intervention and a statement of the contents of the company's safe deposit box when opened by the Intervenor. The inventory showed total assets of \$309,915.61, compared to \$381,571.91 and \$304,773.95, the total assets in the June 30, 1960 and July 30, 1960 balance sheets, respectively.

Upon consideration of the entire record, the Commission finds that the most appropriate measure of the value of the corporation at the time of intervention is the asset total of \$309,915.61 taken from the inventory made at the time of intervention, minus the liabilities of \$82,961.45 shown on the latest balance sheet. Thus the net worth is \$226,954.16 or \$120.656 for each of the 1,881 outstanding shares of stock. The Commission concludes that claimant, as the owner of 188 shares of such stock, suffered a loss in the amount of \$22,683.33 on August 16, 1960 as a result of the intervention of

the enterprise by the Government of Cuba, within the meaning of Title V of the Act.

The Commission further finds that the company was indebted to claimant in the amount of \$4,504.36 for dividends declared but unpaid since the uncanceled check for this amount was among the contents of the safe deposit box taken by the Intervenor. The Commission concludes that claimant suffered an additional loss in the amount of \$4,504.36 on August 16, 1960, making a total loss of \$27,187.69 resulting from the intervention of this enterprise.

8. *Contratos Mobiliarios Cremo, S.A.*

The Commission finds that this corporation, which was solely owned by claimant, was organized in December, 1959 to purchase the accounts receivable of another firm and to collect said accounts. Although no evidence has been submitted of action taken by the Government of Cuba with respect to this corporation on a specific date or under a specific law, the record indicates that it was taken about the end of the year 1962. In the absence of evidence to the contrary, the Commission finds that the corporation was taken by the Government of Cuba on December 15, 1962.

As evidence of the value of the enterprise, claimant has submitted a financial statement showing that as of September 30, 1962, the assets of the firm consisted of \$12,176.11 in a bank account and \$455,624.30 in accounts receivable, for a total of \$467,800.41. No liabilities are shown. However, to finance the purchase of the accounts receivable, Contratos Mobiliarios Cremo, S.A. had borrowed money from other enterprises in which claimant had an interest. The balance sheet for Powe Equipment Company, S.A. as of September 30, 1960 reveals that it was owed \$195,000.00 by the subject corporation on that date. The balance sheet of June 30, 1960 for the Powe Machinery Company, S.A. also includes an indebtedness of \$173,000.00 owed by this company, and there is no evidence of any subsequent reduction of the amounts owed.

On the basis of all the evidence of record, the Commission finds that the value of Contratos Mobiliarios Cremo, S.A. on the date of loss was \$99,800.41 (\$467,800.41 minus \$195,000.00 and \$173,000.00); and concludes that claimant suffered a loss in that amount on December 15, 1962 within the meaning of Title V of the Act.

9. *Sociedad de Inversiones La Loma, S.A.*

The Commission finds that claimant was the sole owner of this corporation which was organized in Cuba on October 8, 1950 for the purpose of acquiring title to lands owned by claimant. No evidence has been submitted to establish specific action by the Government of Cuba concerning this corporation, but the record indicates that certain properties owned by the corporation were nationalized with the properties of Powe Equipment Company, S.A. and Powe Machinery Company, S.A. on October 24, 1960. In the absence of evidence to the contrary, the Commission finds that the corporation was taken by the Government of Cuba on October 24, 1960.

Claimant asserts a loss in the amount of \$1,291,118.47 and in support thereof has submitted a financial statement as of September 30, 1960 and supplementing affidavits by the president of Powe Machinery Company, S.A. and three Cuban attorneys. The financial statement lists only assets of the corporation asserting that no liabilities existed since it operated as a land holding company. The statement did not include however the value of a

stock interest in another real estate corporation which interest was valued by the Cuban secretary of that corporation at \$375,000.00. Furthermore, the balance sheet of June 30, 1960 for the Powe Machinery Company, S.A. has an asset entry for a loan due from Sociedad de Inversiones La Loma, S.A. in the amount of \$80,692.71.

Accordingly, the Commission determines the assets and liabilities of Sociedad de Inversiones La Loma, S.A. as of October 24, 1960 to be the following:

<i>Assets</i>		
Cash		
On Hand	\$300,066.00	
In First National City Bank of New York	71,577.21	\$ 371,643.21
Properties		
Lots, estancia La Loma, Havana	\$ 43,225.18	
Lots, estancia San Martin, Havana	142,020.99	
Alamar and Alturas del Olimpo lots	66,021.34	
Lot, City of Santa Clara	24,068.45	275,335.96
Investments		
5 Shares Inversiones Mouruso, S.A.	\$ 5,000.00	
4,375 Shares Territorial Alturas del Olimpo, S.A.	375,000.00	380,000.00
Mortgages to be Collected		
Powe Machinery Company, S.A.	\$144,000.00	
Inversiones Mouruso, S.A.	105,139.30	249,139.30
Loans to be Collected		15,000.00
Total Assets		<u><u>\$1,291,118.47</u></u>

Liabilities

Loan from Powe Machinery Company, S.A.	<u><u>\$ 80,692.71</u></u>
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The net worth of the corporation, therefore, is \$1,210,425.76. The Commission concludes that claimant suffered a loss in that amount on October 24, 1960 within the meaning of Title V of the Act.

10. *Compania Inmobiliaria El Mamey, S.A.*

The Commission finds that claimant was the sole owner of all the shares of Compania Inmobiliaria El Mamey, S.A. which was organized in Cuba on July 19, 1957 for the purpose of holding title to farm property previously held by claimant. The only asset of this company was a tract of land of 100,607 square meters located near the intersection of Via Blanca and Carretera Central Highways in Cojimar, Guanabacoa, Province of Havana, Cuba, in an area where subdivisions were being built. No evidence has been submitted of specific action taken by the Government of Cuba concerning this corporation and claimant has filed an affidavit by a Cuban attorney that its property was nationalized about the years 1960 and 1961. In the absence of evidence to the contrary, the Commission finds that the corporation was nationalized by the Government of Cuba on October 24, 1960 when claimant's major corporate interests were nationalized.

Although claimant states the land was worth more, the amount claimed is

the purchase price in 1957 of \$300,000.00. This value is also the value stated in documents deposited with the American Embassy in Havana in 1960. The Commission therefore determines the value of this corporation at the time of loss as \$300,000.00 and concludes that claimant suffered a loss in that amount on October 24, 1960 within the meaning of Title V of the Act.

11. *Compania Petrolera Arabia, S.A.*

The Commission finds that claimant was the owner of 10 shares of the 600 shares outstanding of Compania Petrolera Arabia, S.A., a Cuban corporation organized on October 26, 1948. The company was the owner of an oil concession known as Tirana, covering 2,200 hectares of land located in Matanzas Province, Cuba which was leased jointly to Compania Petrolera Norita, S.A. and Esso Standard (Cuba) Inc. By terms of the lease Compania Petrolera Arabia, S.A. was to share in an annual rent of \$25,000.00, its share approximating \$1,000.00, and to receive a royalty of 5% of production. There is no evidence to establish that explorations were made or oil extracted in the leased area.

The rights of the corporation in the property which it controlled were substantially curtailed by the Cuban Government under Law No. 635 of November 23, 1959. This law effectively cancelled all applications for exploration and exploitation of concessions, regardless of the status thereof. (See *Claim of Felix Heyman*, Claim No. CU-0412, 1968 FCSC Ann. Rep. 51) Thus the Commission finds that the property of the corporation was taken by the Government of Cuba on November 23, 1959.

Claimant asserts a loss in the amount of \$833.30 for his 10 shares and in support of this has submitted the affidavit of the corporation's president. On the basis of the affidavit and other evidence available to the Commission, it is determined that the company had a value of \$50,000.00 on November 23, 1959 and the Commission concludes that claimant suffered a loss in the amount of \$833.30 for his ownership interest on that date as a result of the actions of the Government of Cuba, within the meaning of Title V of the Act.

12. *Payments to Caterpillar Americas Company*

Powe Machinery Company, S.A. and Powe Equipment Company, S.A. were the Cuban representatives for Caterpillar Americas Company although the franchise for Cuba was in claimant's name. Payment for merchandise shipped to Cuba was guaranteed by claimant. As a result, when two sight drafts in the amount of \$45,807.15 and \$44,960.82 due December 1, 1959 and December 7, 1959, respectively, were paid to the collecting bank, the Royal Bank of Canada, by the consignee but no amount was forwarded to the consignor, payment of the past due sums was made to the consignor by the claimant on March 13, 1961. Claimant, therefore, asserts claim herein for the amount of \$90,767.97 which he acquired by subrogation.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds to creditors abroad by numerous, unreasonable and costly demands upon the consignees. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein and the subrogor, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of claimant and the subrogor, which resulted in the taking of Ameri-

can-owned property within the meaning of Section 503(a) of the Act. (See *Claim of The Schwarzenbach Huber Company*, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].)

Accordingly, the Commission finds that claimant, as subrogee, succeeded to and suffered a loss in the amount of \$90,767.97 on March 13, 1961 within the meaning of Title V of the Act. The Commission has held that with respect to an assignment of a claim the date of assignment shall be used for the purpose of computing interest. (See *Claim of Executors of the Estate of Julius S. Wikler, Deceased*, Claim No. CU-2571, 1968 FCSC Ann. Rep. 47.)

13. *Payments to Deere & Company and John Deere Intercontinental, S.A.*

Claimant asserts a loss of \$55,180.53 for payments made to Deere & Company and its subsidiary John Deere Intercontinental, S.A. on behalf of Cuban corporations for merchandise shipped to Cuba. Cuban corporations controlled by claimant held Cuban franchises for products of Deere & Company, and payment for shipments of merchandise to these corporations was guaranteed by claimant. It is asserted that shipments were made to Cuba and payment made on drafts for the shipments to Cuban collecting banks but no funds were remitted to the consignor.

There is no evidence of drafts issued or paid for Deere equipment in the record. However, an affidavit of the Credit Manager of John Deere Intercontinental, S. A. established that claimant as guarantor made payments for the Cuban enterprises to John Deere Intercontinental, S.A. of \$46,737.14, to Deere & Company of \$3,633.61, and to the Export-Import Bank of Washington of \$4,809.78. The payments to the Export-Import Bank, however, were for notes which were paid by claimant on March 19, 1962 and which will be discussed below with other payments to that bank.

The Commission finds that claimant acquired a claim in the amount of \$50,370.75 by subrogation as a result of his payment of the debts of nationalized Cuban enterprises which payments were determined to have been made by him on March 19, 1962 in the absence of evidence to the contrary.

Accordingly, the Commission finds that claimant, as subrogee, succeeded to and suffered a loss in the amount of \$50,370.75 on March 19, 1962 within the meaning of Title V of the Act. Again interest will be computed from the date of the assignment of this claim to claimant.

14. *Payments to Export-Import Bank of Washington*

Claim is made for the sum of \$8,460.42 paid by claimant to the Export-Import Bank of Washington for the account of Powe Machinery Company, S.A. on notes held by that bank. The record reflects and the Commission finds that claimant made payment on March 19, 1962 of \$4,809.78 and on July 5, 1962 of \$3,650.64 on notes due and owing by the Powe Machinery Company, S. A. which had been nationalized by the Government of Cuba on October 24, 1960. The notes were originally payable to John Deere Intercontinental, S.A. and Caterpillar Americas Company and subsequently endorsed over to the bank. Thus the Commission finds that the amount of \$8,460.42 was a debt of a nationalized enterprise to which claimant became subrogated by his payments of March 19, 1962 and July 5, 1962.

Accordingly, the Commission finds that claimant succeeded to and suffered losses in the amounts of \$4,809.78 and \$3,650.64 on March 19, 1962 and July 5, 1962, respectively, within the meaning of Title V of the Act.

15. *Commission on Sale for John Deere Intercontinental, S.A.*

Claim is made for the amount of \$122,419.62 due from the Government of Cuba for a sales commission on equipment sold to the Cuban Government for which a promissory note signed by Fidel Castro was given. The Commission has previously determined the *Claim of Deere & Company*, Claim No. CU—2392 wherein a certification of loss was made to the company based upon the note dated May 1, 1960 which matured May 1, 1961. The note was in the face amount of \$389,591.12 and the share of loss for Deere & Company was held to be \$267,171.50, the balance representing the sales commission due claimant herein.

Thus the Commission reaffirms its previous decision holding the failure of the Government of Cuba to pay the promissory note on its maturity date, May 1, 1961, constituted a taking of claimant's property. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$122,419.92 within the meaning of Title V of the Act on May 1, 1961.

16. *Chriscraft Yacht*

The Commission finds that claimant was the owner of a 75% interest in a Chriscraft yacht for which claim is made in the amount of \$12,000.00. The record contains an affidavit of Mr. Waller Barrett affirming his sale to claimant of a 75% interest in a thirty-nine foot Chriscraft Cabin Cruiser for \$12,000.00 during the year 1957, and the cruiser was subsequently taken to Cuba where it was based at the Havana Biltmore Yacht and Country Club. Claimant's income tax records in the file establish the taking of a loss by claimant of \$12,000.00 for the seizure of the cruiser early in 1960. In the absence of evidence to the contrary, the Commission finds that the cruiser was taken by the Government of Cuba on March 1, 1960.

On the basis of all the evidence of record, the Commission concludes that claimant suffered a loss in the amount of \$12,000.00 on March 1, 1960 within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<i>FROM</i>	<i>ON</i>
November 23, 1959	\$ 833.30
March 1, 1960	12,000.00
August 16, 1960	27,187.69
October 24, 1960	8,567,168.70
February 23, 1961	98,500.00
March 13, 1961	90,767.97
May 1, 1961	122,419.62
September 13, 1961	430,276.87
March 19, 1962	55,180.53
July 5, 1962	3,650.64
December 15, 1962	99,800.41

\$9,507,785.73

CERTIFICATE OF LOSS

The Commission certifies that WILLIAM A. POWE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million Five Hundred Seven Thousand Seven Hundred Eighty-five Dollars and Seventy-three Cents (\$9,507,785.73) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., February 12, 1970.

IN THE MATTER OF THE CLAIM OF FREEPORT SULPHUR COMPANY

Claim No. CU-2625—Decision No. CU-6162

Under Title V of the Act, the value of a mining concession, like any other property, must be determined as of the date of loss. No amount can be allowed on the basis that in the future improved processes and conditions may render the concession suitable for commercial development and therefore valuable.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$387,000.00, was presented by FREEPORT SULPHUR COMPANY based upon the asserted loss of certain mining concessions in Cuba owned by claimant's Cuban subsidiary.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the

outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times more than 50 per cent of its outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that for the period November 16, 1959 through February 15, 1967, over 98.5 per cent of claimant's outstanding capital stock was held by individuals having addresses in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The evidence establishes and the Commission finds that at all pertinent times claimant owned 100 per cent of the outstanding capital stock of Cia. Exploradora de la Isla, S.A. (Islexco), a Cuban corporation.

Since Islexco was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1) (B) of the Act, *supra*. In this type of situation, it has been held that a stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

It is asserted that Islexco's assets consisted of a large number of mining concessions located in Las Villas, Pinar del Rio, and Oriente Province, Cuba. The record include copies of deeds which support claimant's assertions in these respects. It further appears from the evidence of record that the Government of Cuba intervened Islexco's mining concessions pursuant to Resolution 4382, issued by the Ministry of Agriculture, on July 27, 1960, under Law No. 617 of October 27, 1959.

Claimant asserts the following losses:

San Isidro Properties, Las Villas Province.....	\$ 38,564.24
Carlota Properties, Las Villas Province.....	103,495.49
Pinar del Rio Properties, Pinar del Rio Province	42,436.25
Taco Bay Nickel Properties, Oriente Province.....	188,792.71
Cristo Manganese Properties, Oriente Province.....	13,711.31
Total	\$387,000.00

The following mining reports have been submitted by claimant:

1. A copy of a report of July 31, 1950 by Richard V. Colligan, president of Islexco, concerning the San Isidro Properties. This report covers an examination of two major areas during the period July 13, 1949 to September 17, 1949, and indicates the presence of manganese in those areas. Commercial exploitation of the ore deposits is recommended in the report only "should a satisfactory method of treating the ores be developed." Moreover, the report suggests the need for an engineering study to determine the adequacy of water for mining and washing plant purposes; it indicates that dock and storage facilities are inadequate; and it suggests that certain "surface rights" would have to be obtained from several large landowners in the area.

2. A copy of an extract from a report of February 1917 by Yeatman & Berry concerning the Carlota Properties. That extract indicates the presence of sulphur, iron and copper in the mines, and recommends "that the required expenditures be made to build the railway, to equip the mine, and

3. A copy of a report of December 12, 1951 by B. F. Darnell also covering the Carlota Properties, which indicates negative results confirming statements in Mr. Colligan's affidavit of February 19, 1971.

4. A copy of a report of January 1944 by Richard V. Colligan, concerning the Pinar del Rio Properties. In this report, Mr. Colligan "recommended that this property be dropped from consideration" because the reserve is believed to be too small to warrant the large capital expenditure necessary for plant and mine installations."

5. A copy of a report of March 27, 1951 by Richard V. Colligan, concerning the Taco Bay Nickel Properties, in which Mr. Colligan "made a rough calculation of tonnages of nickel ore developed at Taco Bay during our examination in 1945."

6. A copy of a report of October 7, 1956 by H. G. Kristjansen also covering the Taco Bay properties. This report indicates the results of certain drilling operations during the latter part of September and the first half of October 1955, and includes estimates based primarily upon the 1945 project.

The record includes no such reports concerning the Cristo Manganese Properties.

It appears from Mr. Colligan's affidavit of April 24, 1967, that this claim is based on the "capitalized cost of such mining concessions" as shown by Islexco's books and records. With respect to property loss claims, the Commission's functions include determination of the values of properties taken by Cuba on the dates of loss. Therefore, this claim was construed to be based upon the value of any ores in the mines in question on July 27, 1960, the date of loss. Accordingly, the Commission suggested the submission of evidence to establish the value of Islexco's ores and the extent of any mining operations performed by Islexco or claimant.

Mr. Colligan recites in his affidavit of February 19, 1971 that "In each case, the reserves were not considered ripe for commercial development", but claimant awaited "the day when higher metal prices and improved treatment processes would render these deposits suitable for commercial development." Under these circumstances, "No mining was performed" by Islexco or Freeport on any of the properties discussed herein.

The Commission made further inquiries concerning the value of the ores in question. It called claimant's attention to the fact that the Cuban Iron Ore Company, which had leased the Pinar del Rio Properties to Islexco, had asserted a claim for the loss of those mines and royalties under the lease with Islexco (Claim No. CU-3337), and that the claim had been denied for failure to establish that its property had any value.

In an affidavit of March 19, 1971, Mr. Colligan stated as follows: "With respect to the value of the ore reserves which are the subject of this claim, since the deposits were never exploited no definitive estimates of capital and operating costs were made. Hence no profit estimates are available. . . . I am, however, in a position to make a quantitative evaluation of the gross value of the ore in the ground." Appended to the affidavit are two schedules. One schedule indicates the gross value of the ore reserves, and the other schedule shows the bases for the calculations. The first schedule sets forth that in 1960 the aggregate gross value of the ore reserves in the ground where the San Isidro, Carlota, Pinar del Rio, and Taco Bay mines were situated was \$1,113,093,516.00. Nothing is included in that amount on account of the Cristo mines because "No reserve data are available," as indi-

cated in the second schedule. That schedule also shows that the calculations therein were based upon the reports discussed above.

This entire matter has been carefully considered. It is deemed unnecessary to dwell upon Mr. Colligan's computations indicating a gross value of over \$1 billion for the ores in the ground since that fact, in and of itself, is insufficient to establish what value, if any, the ores would have after considering mining and related costs. As already noted, the mines were never operated because "In each case, the reserves were not considered ripe for commercial development"; and the record contains no evidence to show the costs of mining and processing the ores. Moreover, the Pinar del Rio mines are indicated as having a gross value of \$437,005,520.00, while Mr. Colligan's recommendation in January 1944 was that "this property be dropped from consideration" and the claim of Islexco's lessor based upon the Pinar del Rio mines was denied for lack of proof.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. § 531.6(d) (1970).)

The Commission finds that claimant has failed to sustain the burden of proof. While claimant's investment in the mines has some probative value, it is insufficient to establish the value of the mines on the date of loss. (See *Claim of Warren and Arthur Sinadbeck, Inc., et al.*, Claim No. CU-2465.) The Commission finds that claimant has failed to prove that its mining concessions had any value on the date of loss.

Accordingly, this claim is denied in its entirety. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D.C., and entered as the Proposed Decision of the Commission April 14, 1971.

FINAL DECISION

Under date of April 14, 1971, the Commission issued its Proposed Decision denying this claim based upon certain mining concessions in Cuba because the record failed to establish that the concessions had any value on June 27, 1960, the date of loss. The claim had been filed by Freeport Sulphur Company which changed its name to FREEPORT MINERALS COMPANY as of April 26, 1971. Claimant's name of record has been changed accordingly.

Claimant filed objections in the form of an affidavit of June 4, 1971 from Mr. Richard V. Colligan, Vice President of claimant. It asserted that the minerals in the mining concessions had great value, but that the value could not be ascertained because the mines were not yet in operation. Claimant therefore urges the Commission to recognize that fact and allow the amount invested in the concessions in lieu of precise information concerning value thereof.

The Commission notes that while minerals in the ground may be valuable intrinsically, the costs of extracting and refining the minerals may render it economically prohibitive to operate the mines in which the minerals exist. Thus, for practical purposes the mining concessions would have no real value.

Upon consideration of the entire record, the Commission finds no basis for altering the Proposed Decision of April 14, 1971. The Commission reaffirms

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its finding that the record fails to establish that the mining co in question had any value on the date of heoss. Accordingly, the Decision is affirmed in all respects.

Dated at Washnigton, D.C., and entered as the Final Decisio Commission September 8, 1971.

IN **THE** MATTER OF **THE** CLAIM OF **JOHN EL KOURY**

Claim No. CU-0384—Decision No. CU-3796

Where the evidence justifies a finding of value, but it does not fully claimant's assertions, the value may be determined by the appli< sound reasoning based on the evidence of record.

PROPOSED DECISION *

This claim against the Government of Cuba, under Title V of ti national Claims Settlement Act of 1949, as amended, in the amended of \$2,966,630.67, was presented by JOHN EL KOURY based upon sserted loss of a 50% interest in a Cuban corporation which owned foi in Oriente Province, Cuba, and a 100% interest in another mine also in Oriente Province, Cuba. Claimant has been a national of the Unite since birth.

Under Title V of the Internationahe Claims Settlement Act of 1 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 S. (1965)], the Commission is given jurisdiction over claims of national United States against the *Government* of Cuba. Section 503(a) of provides that the Commission shall receive and determine in accordai applicable substantive law, including international law, the amoi validity of claims by nationals of the United States against the Gov of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, interve other taking of, or special measures directed against, property ii any rights or interests therein owned wholly or partially, directE directly at the time by national of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest includ leasehold interest, and debts owed by the Government of Cub; enterprises which have been *nationalized*, expropriated, intervE taken by the Government of Cuba and debts which are a charge c erty which has been nationalized, expropriated, intervened, or t the *Government* of Cuba.

The record discloses that El Koury-Cobty *Mining* Corporation, which claimant asserts a 50% interest, was organized under the laws and does not qualify as a corporate "national of the United States" by Section 502(1) (B) of the Act as a corporation or other legal en ganized under the laws of the United States, or of any State, the Di; Columbia, or the Commonwealth of Puerto Rico, whose ownership i; to the extent of 50 per centum or more in natural persons who are of the United States. In this type of situation, it has been held pr<

that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds on the basis of the evidence of record, including a stock certificate and original deeds, that claimant owned a 50% interest in El Koury-Cobty Mining Corporation, S.A., hereafter referred to as the Cuban corporation, which was incorporated in Cuba in 1948; and that claimant was the sole owner of the undeveloped property known as the Isabel Mine, acquired in 1948 for \$5,000.00. As to the latter the Commission finds the price paid for that property to be its fair value at the time of nationalization. It further appears from the evidence of record that the Cuban corporation owned four mines in Oriente Province, Cuba; namely, the San Miguel Mine, the St. Joseph Mine, the San Basilio Mine and the Daher Mine; and that the Isabel Mine was also located in Oriente Province, Cuba.

On October 27, 1959, the Cuban Government enacted Law No. 617, which authorized the Minister of Agriculture to order the commercial exploitation of mineral resources in Cuba. Claimant has stated that the mines in question were nationalized by Cuba in 1960. The record shows that under date of February 9, 1960, the Department of State replied to claimant's inquiry of January 25, 1960 concerning said mines and referred to Law No. 617 of October 27, 1959, published November 17, 1959. In the absence of evidence to the contrary, the Commission finds that the four mines owned by the Cuban corporation and the Isabel Mine owned by the claimant were taken by the Government of Cuba on February 15, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

It should be noted that initially claimant asserted a loss \$989,000.00 instead of the \$2,966,630.67 now claimed. The former amount was computed as follows:

(1) Four mines (above named)	\$270,000.00
(2) 50% stock interest in El Koury-Cobty Mining Corp., S.A.	500,000.00
(3) Loss of lease income	219,000.00
	<hr/>
	\$989,000.00

Following considerable correspondence asking for a clarification of claimant's figures, it appeared that the four mines had been purchased by the El Koury-Cobty Mining Corporation and so were parts of its assets—thus they were not the subject of a separate claim. Further, it appeared that those mining properties, in fact, had never been tested or surveyed to determine the quantity and quality of purported minerals therein. Claimant in his letter of July 16, 1969 to the Commission has now withdrawn "my claim for those mines" so they will not be considered further herein. As to the asserted loss of lease income, the record shows that the principal asset of the mining company was the St. Miguel Mine which was leased on December 14, 1950 by the Company to the Emily S.A. Mining Corporation for a 10% gross royalty for a 30 year term. It therefore follows that the value of the claimant's interest for the loss in question for both lease value and residual value, if any, is a corporate asset and would be affected by the following factors, viz.:

- (1) The type, quantity and quality of the proven ore reserve in the San Miguel Mine;

- (2) The time it would take to develop the property and to mine the ore or, phrased another way, the number of days projected operation during the lease term and the amount of ore processed during each of those days;
- (3) The prices at which the ore would be sold during the actual operation of the lease, which period, allowing for starting-up operations, would be shorter than the lease term;
- (4) The amount of minerable commercial ore, if any, left at the end of the lease term.

Claimant's substantially increased amended claimed amount is based upon various computations he has made primarily as to the asserted ore reserve and his projected production figures now based on a 500 ton a day mill rather than 100 tons per day first used in his claim. Although some evidence has been presented, it does not justify the total now claimed nor the method used by claimant in arriving at it, because the mine has evidently not been in production since the days of its early exploitation by the Spaniards who discovered it shortly after the discovery of Cuba and, because the evidence is inconclusive as to the true value of the total ore reserve. The Commission, therefore, finds that the valuation most equitable to the claimant is one hereinafter described.

Evidence submitted includes a price list of metals, certain assay reports dated August 25 and 26, 1948, and claimant's description as to the measurements made of five mineralized veins. All this gives some idea as to the values of the copper, gold, silver, zinc and the quantities of ore. The primary difficulty, however, is twofold, first (as above mentioned) apparently no production occurred after the execution of the lease in 1950, and secondly, the number of assays for the length of the veins is too small to be taken as fully applying to the large ore bodies claimed. Nevertheless, this evidence does justify some finding of value, for the property would have had a commercial worth in the market place if it had not been expropriated.

As to the reason why the lessee had not yet started actual production, the claimant asserted in his letter of July 17, 1967 to the Commission that this occurred because the lessee ". . . was starting operations at San Miguel Mine when Castro entered Cuba in Oriente Province and made his revolutionary coup on San Miguel Mine, which is located in the Sierra Maestra Mountains in Oriente Province, therefore the one hundred ton mill could not be completed by Emily S.A. Mining Co., and operation ceased." Claimant though asserts that there were six million tons of ore "on site" in that letter, i.e., meaning proven, and a potential of fifty million additional tons—the latter with an estimated value of "one million dollars plus." This does not accord with another one of his statements in his letter of July 16, 1969, that "... we had a proven tonnage of 723,330 tons...."

Further difficulty with claimant's position as to the larger claim now asserted is that the lease was entered into in 1950 and Castro, according to historical accounts, did not operate from the Sierra Maestra Mountains until sometimes in 1956. No explanation is made by claimant as to why such allegedly valuable properties were not mined between 1950 and 1956. We can only surmise that it was because for some reason it was not then profitable to do so. But that does not mean that there was no value to the property. Claimant himself states that he invested \$250,000 in his one-half interest in the enterprise, and the assays in part show some good values on certain samples. However, as stated earlier, we deem the assays as too few in number

to justify the kind of averaging claimant has projected even if we accept his figure of 723,330 tons of possible commercial ore.

Considering all the evidence, the Commission finds that the most equitable valuation of the claimant's company's 10% gross lease interest is a gross worth of \$1,084,995, with claimant's one-half interest being \$542,497.50. The latter sum, plus \$5,000.00 heretofore found as the value of claimant's interest in the Isabel Mine makes a total loss to claimant of \$547,497.50. In holding that claimant suffered a loss of \$547,497.50, the Commission has considered the value of claimant's stock in the El Koury-Cobty Mining Corporation, S.A., based on value of the lease itself and the possible residual value at the expiration of the lease in the event the full tonnage were not mined during the lease term.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JOHN EL KOURY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Forty-Seven Thousand Four Hundred Ninety-Seven Dollars and Fifty Cents (\$547,497.50) with interest thereon at 6% per annum from February 15, 1960 to date of settlement.

Dated at Washington, D.C., July 30, 1969.

IN THE MATTER OF THE CLAIM OF ARCHIBALD S. ABBEY

Claim No. CU-0352—Decision No. CU-6784

For the purpose of Title V of the Act, the value of the property in question must be established by competent and convincing evidence.

FINAL DECISION

This claim was filed by ARCHIBALD S. ABBEY, as the representative of the Estate of his deceased father, CHESTER E. ABBEY. The claim was submitted on August 16, 1965, prior to the opening of the filing period, and such filing was considered validated as of November 1, 1965, the commencement of the period for filing claims against the Government of Cuba. As it was not shown that any legal representative had been appointed, the claim was considered as that of the Estate of CHESTER E. ABBEY, Deceased.

The efforts of the Commission to assist in the development of this claim are outlined in the Proposed Decision. The claim was denied for failure to establish the identity of persons assertedly having any interest in this claim, that they were United States nationals at all pertinent times, that they owned interests in any of the claimed mining concessions in Cuba, or if they *did* that the concessions had any value on the asserted date of loss, and that the claim was owned by nationals of the United States continuously from the date of loss to the date of filing the claim.

Objections were filed in this matter by Chester E. Abbey, grandson of Chester E. Abbey, deceased, and nephew of ARCHIBALD S. ABBEY, and

an oral hearing was held in the Offices of the Commission on June 22, 1972, at which time Chester E. Abbey presented argument on behalf of the Estate. No additional documentary evidence was presented at the hearing.

It has been contended that Chester Eli Abbey and Alice Soutar Abbey (both now deceased) had five children, one of whom died in infancy, and that four survived to adulthood. These four have been identified as Franklin G. Abbey, now deceased, Henry C. Abbey, now deceased, Wellington F. Abbey, now deceased, and ARCHIBALD S. ABBEY. The Commission finds that ARCHIBALD S. ABBEY, a national of the United States at all times pertinent to this claim, inherited a one-fourth part of any interest his grandfather, Chester E. Abbey, Deceased, held in the mining concessions subject of this claim and which were not sold by Alice S. Abbey, on behalf of the Estate. Accordingly, ARCHIBALD S. ABBEY is substituted as claimant, in his individual capacity as a successor in interest to a part of the Estate of Chester E. Abbey, Deceased.

The record does not establish with certainty the successors in interest to the remaining part of the Estate of Chester E. Abbey, Deceased, whether they were United States nationals, and their continued ownership (if any) from the date of loss to November 1, 1965.

On November 17, 1959 the Government of Cuba published its Law 617, which authorized the Minister of Agriculture to order the commercial exploitation of mineral resources in Cuba. Accordingly, the Commission finds that any mining concessions held by the Estate of Chester E. Abbey, Deceased, or his heirs, which had not been sold, were taken by the Government of Cuba on November 17, 1959. (See the *Claim of John El Koury*, Claim No. CU-0384.)

As set out in the Proposed Decision, claim was originally made for the mining concessions Providencia, La Union, Minnesota and El Cupey. Thereafter, in letters of February 18, 1968, and September 25, 1971, subsequent to issuance of the Proposed Decision, ARCHIBALD S. ABBEY clarified that only the El Cupey group is claimed. The Commission found in its Proposed Decision that the first three named mining concessions had been sold and were not owned by any of the heirs of Chester E. Abbey, deceased, when they were taken from the purchaser on August 19, 1960. (See *Claims of Mao Bay Mining Company, et al.*, Claim Nos. CU-2619 and CU-2573.)

The record, including a "Memorandum of All property Owned by C. E. Abbey, Deceased" reflects that the interest of the Estate in the El Cupey group was 12 per cent. This is affirmed in a letter of June 27, 1967 of ARCHIBALD S. ABBEY. Chester E. Abbey has contended that he filed claim with the Internal Revenue Department for losses as a result of the Castro regime takeover, that he got 8.5 years income tax returned based on a large evaluation of the total loss insofar as he suffered a heoss as a grandson. This is not of record. Chester E. Abbey has never clarified whether the claim, after he commenced addressing the Commission, is intended to cover more than the El Cupey group, although this information was requested. However, he stated at the oral hearing that \$200,000 was allowed him by the Internal Revenue as $\frac{1}{10}$ of 12 per cent, although his interest might be $\frac{1}{10}$ of 12 per cent. It is noted that \$200,000 is the amount originally asserted by ARCHIBALD S. ABBEY as the value of the 12% interest of the Estate.

Chester E. Abbey has submitted a copy of a Deposition of June 8, 1966, of William A. J. Pitt, in the Matter of Chester E. Abbey, et al, in the United States Court of Claims, Number 367-65. Mr. Pitt, a mining engineer,

was formerly with the Department of Mines, Oriente Province. In his deposition Mr. Pitt set out his recognition of the abovementioned Memorandum of Properties. He also affirmed that part of the properties including Providencia, La Union and Minnesota had been sold to the Moa Bay Company, and Freeport Sulphur (as then known).

The Commission affirms its holding that the Providencia, La Union and Minnesota mining concessions were not owned by any of the heirs of Chester E. Abbey, Deceased, on the date of any taking by the Government of Cuba. Moreover, it is to be noted that even if the Internal Revenue Service made a return to Chester E. Abbey of taxes paid, on the ground that the properties belonged to the Government of Cuba, this does not establish that prior to such taking, the properties had belonged to the heirs of Chester E. Abbey, deceased. The Collector of Taxes historically accepts taxes proffered and has no obligation to research the title of the one making the payment.

Accordingly, the Commission finds that ARCHIBALD S. ABBEY suffered a loss of his inherited interest of three per cent of the El Cupey group, on November 17, 1959, the date of taking by the Government of Cuba.

There remains for determination the value of the loss suffered by ARCHIBALD S. ABBEY. In this connection the Commission has carefully examined the several sketches and maps submitted by ARCHIBALD S. ABBEY, and his various assertions that the Moa and El Cupey properties consisted of 2,365 acres with 84 million tons of ore—manganese, iron, nickel and cobalt. The abovementioned Memorandum of Properties shows that the El Cupey concessions consisted of 957.40 hectares, equivalent to 2,364.78 acres. By letter of June 27, 1967 ARCHIBALD S. ABBEY stated that the El Cupey group held 58 million tons. Thereafter his calculations of value increase while the method remains unclear.

Chester E. Abbey had submitted certain Internal Revenue Service schedules indicating an original loss of \$100,000 in 1960 and subsequent carryovers for unused portions, but the papers submitted do not indicate the nature of the losses. Clarification was requested of this point, but was not forthcoming. As shown above, the Commission has also considered the assertion of a tax return to Chester E. Abbey.

ARCHIBALD S. ABBEY stated in his letter of September 25, 1971 that the silver content had a value of from 24 to 26 cents an ounce, lead had a value of 5 cents a pound, and zinc had no value. He continued that the ore in these properties was 28 per cent zinc, that the smelter liquidations of the value metals was almost absorbed by the zinc penalties, so they closed the property in 1935. He continued that it would take many years to exploit and process the property, and that the Russians were using the crude ore for ballast in their ships.

The record includes an accounting for the proceeds of the sale of Providencia, La Union and Minnesota on April 7, 1943 for \$21,072. This covered a surface area of 558 hectares, and represented a value of \$37.76 per hectare.

The Commission has also examined the abovescribed deposition of William A. J. Pitt. It is noted that he stated that the El Cupey property had not been mined for iron or nickel. He gave it as his opinion that El Cupey had twenty to forty million tons of ore—a wide allowance which is not shown to be proved. He also indicated that certain properties in the vicinity could be sold for \$125 a hectare, and \$1.00 royalty per dry ton, but that

El Cupey would be lower, inasmuch as it would take ten years to exploit the Moa properties (sold) but would take about twenty years for El Cupey.

The evidence of record justifies some finding of value inasmuch as the property would have had a commercial worth in the market place, if it had not been taken by the Government of Cuba.

On the basis of the 1943 sale and Mr. Pitt's various statements, the Commission finds that the 957.40 hectares of El Cupey had a surface value averaging \$50 per hectare, aggregating \$47,870.00. Further the Commission finds that the El Cupey property probably contained 5,000,000 tons of ore and after considering a discount rate of 12 per cent appropriate to the area, over a 15 year period, finds that the value of the El Cupey ores was \$950,000 on the date of loss.

Accordingly, the Commission finds that ARCHIBALD S. ABBEY suffered a loss of \$29,936.10 when his 3 per cent interest was taken on November 17, 1959.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

Accordingly the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that ARCHIBALD S. ABBEY, individually, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Nine Thousand Nine Hundred Thirty-Six Dollars and Ten Cents (\$29,936.10) with interest thereon at 6% per annum from November 17, 1959 to the date of settlement.

Dated at Washington, D.C., June 23, 1972.

IN THE MATTER OF THE CLAIM OF MOA BAY MINING COMPANY, ET AL.

Claim Nos. CU-2619 and CU-2573—Decision No. CU-6049

Valuation of mining concessions may be determined by application of appropriate discount rates. Other items of property may be evaluated by competent and persuasive evidence.

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amounts of \$98,005,000.00 and \$68,071,000.00, respectively, were presented by MOA BAY MINING COMPANY AND CUBAN AMERICAN NICKEL COMPANY based upon the asserted heosses of certain real and personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat.

* This decision was entered as the Commission's Final Decision on March 15, 1971.

988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that MOA BAY MINING COMPANY (MOA) and CUBAN AMERICAN NICKEL COMPANY (CUBAN AMERICAN) were organized under the laws of Delaware (Exhibits B and D), and that at all pertinent times more than 50% of the outstanding capital stock of MOA and CUBAN AMERICAN were owned by nationals of the United States. It further appears that at all times from November 23, 1955, when MOA was incorporated, to the date of filing all of MOA's outstanding capital stock was owned by CUBAN AMERICAN (Exhibit C). In turn, all of CUBAN AMERICAN's outstanding capital stock was owned from August 11, 1955, when CUBAN AMERICAN then known as Freeport Nickel Company was incorporated, to November 8, 1963, by Freeport Sulphur Company (Freeport), a corporation organized under the laws of Delaware (Exhibit E).

Ever since November 8, 1963, all of CUBAN AMERICAN's outstanding capital stock has been owned by the First National City Bank, Bankers Trust Company, Mellon National Bank and Trust Company, Chemical Bank New York Trust Company and The Bank of New York, all of which banks qualify as nationals of the United States within the meaning of Section 502(1) (B) of the Act (Exhibits G and H). An authorized officer of Freeport has certified that from November 16, 1959 to February 15, 1967, over 98.5% of Freeport's outstanding capital stock was owned by persons having addresses in the United States (Exhibit F; also see *Claim of Freeport Sulphur Company*, Claim No. CU-2625). The Commission holds that MOA and CUBAN AMERICAN are nationals of the United States within the meaning of Section 502(1) (B) of the Act.

Claimants assert the following losses:

MOA (CU-2619)

Loss of earnings, plant and equipment	\$88,349,000.00
Loss of earnings from reinvestment of excess cash	9,656,000.00
Total	<u>\$98,005,000.00</u>

CUBAN AMERICAN (CU-2573)

Loss of earnings, plant and equipment	\$60,809,000.00
Loss of earnings from reinvestment of excess cash	7,262,000.00
Total	<u>\$68,071,000.00</u>

STOCKHOLDER AND CREDITOR CLAIMS

MOA and CUBAN AMERICAN state that they filed their claims on their own behalf; on behalf of CUBAN AMERICAN as stockholder and creditor of MOA; on behalf of other creditors of MOA; on behalf of the said five banks in their respective capacities as stockholders and creditors of CUBAN AMERICAN; and on behalf of other creditors of CUBAN AMERICAN.

Section 505(a) of the Act provides that a claim under section 503(a) of the Act, based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered.

The Commission finds that the claim of CUBAN AMERICAN as a stockholder of MOA and the claims of the banks as stockholders of CUBAN AMERICAN are barred by the express provisions of Section 505(a) of the Act because MOA and CUBAN AMERICAN qualify as nationals of the United States. Accordingly, those claims are denied. (See *Claim of Mary F. Soxhenberg*, Claim No. CU-0014, 25 FCSC Semiann. Rep. 48 [July-Dec. 1966].)

The record indicates that the following concerns have joined the claims herein as creditors of CUBAN AMERICAN:

First National City Bank
 Bankers Trust Company
 Mellon National Bank and Trust Company
 Chemical Bank New York Trust Company
 The Bank of New York
 Republic Steel Corporation
 United States Steel Corporation
 McLouth Steel Corporation
 Jones & Laughlin Steel Corporation
 General Motors Corporation
 Ford Motor Company

Section 505(a) of the Act further provides that a claim under Section 503(a) based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission has previously held that a claim based upon a debt of

an entity qualifying as a United States national may not be considered unless the debt was a charge on property taken by the Government of Cuba. (See *Claim of Anaconda American Brass Co.*, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

It is neither alleged nor does the record show that any of the debts upon which the aforesaid creditors base their claims were charges on any properties taken by the Government of Cuba. The Commission is therefore precluded from considering their claims.

However, it is contended by MOA and CUBAN AMERICAN that the heegislative history of the Act indicates that it was not intended that Section 505(a) should exclude claims of banks, insurance companies, financial institutions or other entities based upon debts or other obligations.

This issue was considered by the Commission in the course of determining the debt claim of a bank under Title V of the Act. The Commission held as follows:

Finally, we find no merit in the claimant's contention that the legislative history of the Act exempts banks from the operation of Section 505(a). This was considered previously by the Commission and rejected in the Proposed Decision [1968 FCSC Ann. Rep. at 64] wherein the Commission found that the language of the section itself is quite clear and contains no exception in favor of banks. (See *Claim of The First National Bank of Boston*, Claim No. CU-2268, Final Decision entered February 26, 1969, 1969 FCSC Ann. Rep. 33.)

For 'all of the foregoing reasons, the claim of CUBAN AMERICAN and the claims of the creditors based upon debts due either from CUBAN AMERICAN or MOA are denied.

CLAIM No. CU-2573 (CUBAN AMERICAN)

CUBAN AMERICAN asserts a heoss of \$68,071,000.00 by virtue of a contract dated January 19, 1959 between MOA and CUBAN AMERICAN (Exhibit M) relating to certain mining concessions in Cuba owned by MOA.

The agreement of January 19, 1959 provides for the sale of MOA's ores (nickel-cobalt concentrates) to CUBAN AMERICAN pursuant to certain conditions. The contract was to continue for a period of five years, and MOA was to receive 60% of the net income derived from the sale of MOA's ores after being refined by CUBAN AMERICAN. It appears that CUBAN AMERICAN financed its project by loans from the five banks which, since November 8, 1963, have been CUBAN AMERICAN's sole stockholders.

Upon consideration of the entire record, the Commission finds that CUBAN AMERICAN owned no proprietary interest in any of MOA's mining concessions or related properties in Cuba. Insofar as those concessions and properties are concerned, the only rights that CUBAN AMERICAN possessed stemmed from the contract of January 19, 1959, and that contract merely provided for the sale of extracted ores to CUBAN AMERICAN.

Loss of Earnings, Plant and Equipment:

CUBAN AMERICAN asserts a loss in the aggregate amount of \$60,809,-000.00, representing the loss of earnings based on the contract of January 19, 1959, and the discounted depreciated value of its plant and equipment in the United States.

It appears that in anticipation of that contract, CUBAN AMERICAN acquired in 1957 from Freeport certain real property in Louisiana (Exhibit L). During 1957, 1958, 1959 and 1960, CUBAN AMERICAN caused to be

constructed on the property in Louisiana certain facilities for refining nickel-cobalt concentrates.

Inasmuch as CUBAN AMERICAN owned no interest in MOA's properties in Cuba, no property belonging to CUBAN AMERICAN was taken by Cuba. Moreover, since CUBAN AMERICAN's plant and equipment were in the United States, the Commission finds that being outside the jurisdiction of Cuba, these assets could not have been taken by Cuba. Accordingly, the portion of CUBAN AMERICAN's claim for the asserted loss of earnings, plant and equipment is denied.

Loss of Earnings from Reinvestment of Excess Cash:

CUBAN AMERICAN asserts a loss of \$7,262,000.00, representing the estimated earnings it would have derived from the investment of cash available as a result of its operations in the United States pursuant to the contract of January 19, 1959. The Commission finds that this portion of the claim also is not covered by the Act. Moreover, it appears that this portion of the claim is entirely speculative, covering estimated earnings from reinvestments over a 22-year period. (*See Claim of Metro-Goldwyn-Mayer, Inc.*, Claim No. CU—2225.) Accordingly, this portion of the claim is denied.

CLAIM No. CU—2619 (MOA)

The evidence establishes and the Commission finds that pursuant to certain agreements and other instruments executed in 1957 and 1959, MOA acquired certain mining concessions situated in the vicinity of Baracoa, Oriente Province, Cuba, in the northeastern part of Cuba known as Moa Bay (Exhibit I). These concessions were duly recorded with Cuban authorities.

The Commission further finds that MOA caused to be constructed in that area an extensive plant and appurtenant facilities to support its mining operations in Moa Bay. The record includes copies of audited balance sheets and other financial statements for MOA as of various dates in 1959, 1960 and 1961 (Exhibits J and K), which indicate the extent of MOA's investments in such facilities in Cuba.

On the basis of the entire record, the Commission finds that MOA sustained a loss within the meaning of Title V of the Act when its facilities were intervened by the Government of Cuba on August 19, 1960 pursuant to Resolution No. 4579 issued by the Ministry of Labor under Law 647 of November 24, 1959.

Loss of Earnings, Plant and Equipment :

The aggregate amount asserted by MOA on account of loss of earnings, plant and equipment is \$88,349,000.00. The Commission holds this portion of the claim to be based upon the value of MOA's mining concessions and properties that were intervened by the Government of Cuba on August 19, 1960. (*See Claim of Howard E. Holtzman et al.*, Claim No. CU—2168.)

The evidence includes a detailed, technical report of MOA's mining concessions in Cuba, prepared in May 1956 by Eugene P. Pfeleider, Consulting Mining Engineer, on the basis of drilling and exploration, the sampling of extracted ores, and analyses of the samples (Exhibit O). Thereafter another study of the concessions was made by Sanderson & Porter, independent engineers. Their detailed report, dated March 6, 1957 (Exhibit P), concludes with the statement, *inter alia*, that "measured currently economic

ore reserves . . . are sufficient to support an annual production of 50,000,000 pounds of nickel and 4,400,000 pounds of cobalt for about 22 years." Appended to that report is a letter of February 20, 1957 from Eugene P. Pfeider, revising his May 1956 Ore Reserve Report (Exhibit O) upward on the basis of sampling more ores extracted from 150 new holes.

On the basis of the foregoing evidence, the Commission finds that MOA's proven ore reserves were sufficient to produce 50,000,000 pounds of nickel and 4,400,000 pounds of cobalt annually for 22 years.

The said agreement of January 19, 1959 between MOA and CUBAN AMERICAN (Exhibit M) provided for the sale to CUBAN AMERICAN of all the ores extracted from MOA's mining concessions. CUBAN AMERICAN agreed to refine the ores and sell them to its customers. In consideration thereof, MOA was to receive 60% of the net profits derived from the sale of the refined ores. That contract was to terminate on June 30, 1965. It further appears that MOA had made certain arrangements with the Cuban Treasury Department, pursuant to which its income for Cuban tax purposes was to be 60% of such net profits until June 30, 1965 and 65% of such net profits thereafter.

On the basis of the evidence of record (Exhibits N and R), the Commission finds that the net amounts to be derived from the sale of the refined ores were \$0.726 per pound for nickel after sales adjustments, and \$2.00 per pound for cobalt until June 30, 1965. Thereafter, the prices would be \$0.726 per pound of nickel and \$1.50 per pound of cobalt until the end of the 22-year term, June 30, 1982, when the ores would be exhausted.

The Commission therefore finds that the gross value of the refined ores was \$45,100,000.00 per year for the period ending June 30, 1965, and thereafter at the rate of \$42,900,000.00 for the remaining period. MOA's computations also include the liquidated value of its plant and equipment as of the end of the 22-year term in the amount of \$11,600,000.00, which is found to be fair and reasonable. The evidence (Exhibit J) includes copies of audited balance sheets and other financial statements covering MOA's Cuban operations. The balance sheet as of September 30, 1960, closest to the date of loss, shows that MOA owned *land* in Cuba valued at \$5,041,021.38, and plant, equipment and related facilities valued at \$59,395,791.97 after depreciation of \$1,051,016.72.

MOA had applied to the Internal Revenue Service for a Necessity Certificate to permit it to rapidly depreciate its Cuban assets pursuant to the Internal Revenue Code. A detailed report (Exhibit K) submitted in support of MOA's application to the Internal Revenue Service shows that its actual expenditures for facilities in Cuba aggregated \$55,527,455.18.

The record (Exhibit R) shows that the aggregate income to be derived from the sales of the refined ores over the 22-year period plus the liquidated value of MOA's plant and equipment was \$622,485,000.00. The Sanderson & Porter report (Exhibit P) shows that the aggregate cost of extracting and refining the ores was \$19,700,000.00 per year. Of that amount, MOA's operating costs were \$11,857,000.00 per year until 1965 and \$12,055,000.00 thereafter, aggregating \$264,418,000.00 for the entire 22-year period. Thus MOA's gross income after operating costs aggregated \$358,067,000.00.

It further appears that interest on loans to finance MOA's operations would aggregate \$9,816,000.00, and that the aggregate amount of Cuban taxes would be \$104,012,000.00 for the 22-year period. Accordingly, the net amount MOA would have derived for the entire period would be \$244,239,-

000.00. MOA's computations (Exhibit R) also provide for discounting the resulting aggregate net income and the liquidated value of its plant and equipment to arrive at the net worth of its Cuban operations on the date of loss. On this basis, MOA's losses were computed to be \$88,349,000.00.

Upon consideration of the entire record, the Commission finds that MOA's valuations are fair and reasonable. The Commission therefore finds that the aggregate value of MOA as an operating company on August 19, 1960, the date of loss, was \$88,349,000.00.

Loss of Earnings from Reinvestment of Excess Cash:

MOA asserts the loss of \$9,656,000.00 for earnings it would have accumulated as a result of investing excess cash derived after payment of all charges and obligations appurtenant to its Cuban operations. In making this computation, MOA estimated the amounts that would become available at the end of each of the 22 years, after payment of all expenses and repayment of the principal amounts of anticipated loans. The results thus obtained were then considered by MOA to be capable of earning 3% per year compounded, and that amount was discounted at a 12% rate to arrive at the amount claimed.

As stated with respect to CUBAN AMERICAN's claim for a similar loss, this item of claim appears to be entirely speculative. The Commission finds no valid basis for estimating over a 22-year period how much, if any, capital would become available for reinvestment. Moreover, there is no sound basis for supposing that such capital would be reinvested and would earn the amount estimated by MOA.

Upon consideration of this portion of MOA's claim, the Commission finds that it is speculative and is not supported by the evidence of record. Accordingly, this portion of the claim is denied.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that MOA BAY MINING COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-eight Million Three Hundred Forty-Nine Thousand Dollars (\$88,349,000.00) with interest at 6% per annum from August 19, 1960 to the date of settlement.

Dated at Washington, D.C., Feb. 3, 1971.

IN THE MATTER OF THE CLAIM OF NICARO NICKEL COMPANY

Claim No. CU-2624—Decision No. CU-6247

Where the evidence is clear and convincing, the probable and possible ores in a mine, as well as the proven ores, may justify Certifications of Loss provided appropriate annual discount rates are applied to each category of ore.

FINAL DECISION

Under date of June 30, 1971, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$22,494,708.62 plus interest. The Certification of Loss covered certain mining concessions in Cuba in the amount of \$22,297,708.62, and other appurtenant property in the amount of \$197,000.00. In determining the value of claimant's mining concessions, the Commission allowed only the established amount of proven ore, and portions of the claim for probable ore and possible ore were denied. The value of the proven ore was determined by the application of a 12% annual discount rate to the yearly valuations of the ore for the period 1961 to 1979 to arrive at the aggregate value of the proven ore on October 24, 1960, the date of loss.

Claimant objected to the denial of the claim for probable ore and possible ore, and to the use of a 12% annual discount rate. In support of the objections, claimant submitted a report of August 1971 from Behre Dolbear & Company, Inc., a firm of mining, geological and metallurgical consultants, which contains the conclusion that an 8% annual discount rate should be applied to determine the values of the proven ore, probable ore and possible ore. An oral hearing was requested which was held on September 16, 1971.

At the oral hearing, Richard V. Colligan, Vice President of claimant, testified as an expert geologist with many years of experience in Cuban mining operations. Counsel offered in evidence an affidavit of September 16, 1971 from William R. Thurston, geologist, concerning the value of claimant's ore in Cuba, and presented oral argument on behalf of claimant. Mr. Colligan testified that actual experience in exploiting claimant's mining concessions in Cuba showed that earlier estimates of proven ore were substantially less than actually found; that it developed that much of what was considered probable ore was found to be proven; and that much of what was considered possible ore was found to be probable.

Upon consideration of the evidence presented at the oral hearing in light of the entire record, the Commission now finds that claimant's proven ore, probable ore and possible ore, as shown by the evidence, should be allowed, and that the values thereof on the date of loss should be determined by the application of annual discount rates of 8%, 12% and 15%, respectively. Accordingly, the Commission finds that the aggregate values of claimant's ores in Cuba on October 24, 1960 were as follows:

<i>Year</i>	<i>Gross Value</i>	<i>Discount Factor</i>	<i>Net Value</i>
<i>Proven Ore</i>			
1961	\$2,317,900.00	.925926	\$2,146,204.00
1962	2,385,500.00	.857339	2,045,182.00
1963	2,358,200.00	.793832	1,872,015.00
1964	2,358,200.00	.735030	1,733,348.00
1965	2,358,200.00	.680583	1,604,951.00
1966	2,394,600.00	.630170	1,509,005.00
1967	2,576,600.00	.583490	1,503,420.00
1968	4,162,200.00	.540269	2,248,708.00
1969	4,162,200.00	.500249	2,082,136.00
1970	4,162,200.00	.463193	1,927,902.00
1971	4,162,200.00	.428883	1,785,097.00
1972	4,162,200.00	.397114	1,652,868.00

<i>Year</i>	<i>Gross Value</i>	<i>Discount Factor</i>	<i>Net Value</i>
1973	4,162,200.00	.367698	1,530,433.00
1974	4,162,200.00	.340461	1,417,067.00
1975	4,162,200.00	.315242	1,312,100.00
1976	4,162,200.00	.291890	1,214,905.00
1977	4,162,200.00	.270269	1,124,914.00
1978	4,162,200.00	.250249	1,041,586.00
1979	2,180,200.00	.231712	505,179.00
Totals	\$64,713,600.00		\$30,257,020.00

Probable Ore

1979	\$2,071,000.00	.116107	\$240,457.60
1980	4,039,100.00	.103667	418,721.38
1981	4,039,100.00	.092560	373,859.10
1982	4,039,100.00	.082643	333,803.34
1983	4,039,100.00	.073788	298,037.11
1984	4,039,100.00	.065882	266,103.99
Totals	\$23,816,500.00		\$1,930,982.52

Possible Ore

1985	\$4,055,100.00	.030378	\$123,185.83
1986	4,055,100.00	.026415	107,115.47
1987	4,055,100.00	.022970	93,145.65
1988	4,055,100.00	.019974	80,996.57
1989	4,055,100.00	.017369	70,443.03
1990	4,055,100.00	.015103	61,244.18
1991	4,055,100.00	.013133	53,255.63
1992	3,475,800.00	.011420	39,693.64
Totals	\$31,816,500.00		\$629,080.00

Therefore, the aggregate value of claimant's ore was \$32,817,082.52, and the total losses sustained by claimant amounted to \$33,014,082.52.

Accordingly, the Certification of Loss in the Proposed Decision of June 30, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that NICARO NICKEL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Three Million Fourteen Thousand Eighty-Two Dollars and Fifty-Two Cents (\$33,014,082.52) with interest at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D.C., September 28, 1971.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$42,600,000.00, was presented by NICARO NICKEL COMPANY based upon

the asserted loss of certain mining concessions and other assets in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times another Delaware corporation, the Freeport Sulphur Company, now known as Freeport Minerals Company, owned all of claimant's outstanding capital stock. Claimant's Secretary has certified under date of April 24, 1967 that for the period November 16, 1959 to February 15, 1967 over 98.5% of Freeport's outstanding capital stock was owned by residents of the United States and its possessions. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. (See *Claim of Freeport Sulphur Company*, Claim No. CU-2625.)

Claimant has submitted the affidavit of April 24, 1967 from Richard V. Colligan, its Vice President, in which some pertinent background information is included. As a result of a two-year research program, claimant developed an improved process for the commercial exploitation of nickeliferous ores in Cuba. The United States Government became interested in claimant's activities. Pursuant to agreements in 1942, the United States Government invested in preferred stock issued by claimant, which was redeemed in full in 1954 leaving Freeport as the sole owner of all of claimant's outstanding capital stock. The United States Government had acquired certain nickel deposits in Moa Bay, Cuba through ownership of Cuban Nickel Company, S.A., a Cuban corporation, which deposits are not the subject of this claim. (See *Claims of United States of America*, Claim Nos. CU-2522 and CU-2618, 1967 FCSC Ann. Rep. 50.)

MINING CONCESSIONS

The evidence establishes and the Commission finds that pursuant to deeds executed in 1940 and other instruments dated 1954 and 1958, claimant acquired mining concessions in Oriente Province, Cuba (Appendices E, F, G, H, I, J and K). Under an agreement of July 2, 1948, which incorporates an earlier one of March 12, 1942, between the United States Government and claimant (Appendix A), the United States Government acquired the right to take ore from claimant's ore properties for a period of twenty years commencing on March 11, 1948 in exchange for a certain expressed consideration. The United States Government purchased ore from claimant from 1952 to 1960.

On October 24, 1960, the Cuban Government published in its Official Gazette Resolution No. 3 pursuant to Law 851, which listed as nationalized NICARO NICKEL COMPANY (Appendix B). The Commission therefore finds that claimant's mining concessions were nationalized by the Government of Cuba on October 24, 1960.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant asserts that the minimum value of its mining concessions on the date of loss was 42,082,362.00 (Appendix D). In its initial submission, claimant relied upon the affidavit of April 24, 1967 from its Vice President, Richard V. Colligan, a professional geologist who had participated in drilling programs and evaluation studies of claimant's mining concessions. Pursuant to his calculations, claimant's reserves included the following as of June 1960:

<i>Type of Reserve</i>	<i>Short Dry Tons</i>	<i>% Nickel</i>
Proven	33,336,500	1.402
Probable	11,500,000	1.465
Possible	16,500,000	1.366

Mr. Colligan states that the Nicaro plant in Cuba had an annual capacity of 2,100,000 tons of ore; and that the United States Government's ore reserves in Cuba were sufficient to supply only 800,000 tons per year. Therefore, affiant computed this portion of the claim based upon annual sales of 1,300,000 tons of ore to the United States Government from 1961 to 1968 pursuant to the said agreements (Appendix A), and annual sales of 2,100,000 tons thereafter until 1992 when claimant's reserves of all types assertedly would be exhausted (Appendix D).

In response to Commission suggestions, claimant made a further submission under date of May 27, 1971. That submission includes another affidavit from Mr. Colligan; a copy of a memorandum of June 21, 1960 to Mr. Colli-

gan together with attached copies of schedules showing the amounts of **proven** and probable reserves on the basis of a 1955 report; a copy of an unsigned statement of October 31, 1955 showing the proven, probable and possible reserves; and copies of excerpts from two publications. Mr. Colligan states that the October 31, 1955 report was prepared by Forbes Wilson, now a Vice President of Freeport.

Concerning the distinctions between proven, probable and possible reserves, claimant submitted copy of an excerpt from "Examination and Evaluation of Mineral Property" by Baxter and Parks, pages 115-116 (4th ed. 1957) as follows:

C. K. Leith,¹ in preparing estimates of iron ore reserves, has defined terms used to designate respective classes of ore as follows:

"'Assured' ore is defined to cover principally the ore blocked out in three dimensions by actual underground mining operations and drill holes, where the geological factors which limit the orebody are definitely known and where the chance of failure of the ore to reach these limits is so remote as not to be a factor in the practical planning of mine operations.

"'Prospective' ore covers further extensions near at hand, where the conditions are such that ore will almost certainly be found but where the extent and limiting conditions cannot be so precisely defined.

"Ore is classed as 'possible' where the relation of the land to adjacent orebodies and to geological structures warrants the presumption that ore will be found but where the lack of exploration and development data precludes anything like certainty of its actual location or extent."

The U.S. Bureau of Mines and the U.S. Geological Survey, in recent estimates of mineral reserves, have agreed upon and defined² the following terms to signify relative dependability of information:

"'Measured ore' is ore for which tonnage is computed from dimensions revealed in outcrops, trenches, workings, and drill holes and for which the grade is computed from the results of detailed sampling. The sites for inspection, sampling, and measurement are so closely spaced and the geological character is so well defined that the size, shape, and mineral content are well established. The computed tonnage and grade are judged to be accurate within limits which are stated, and no such limit is judged to differ from the computed tonnage or grade by more than 20 per cent.

"'Indicated ore' is ore for which tonnage and grade are computed partly from specific measurements, samples, or production data and partly from projection for a reasonable distance on geologic evidence. The sites available for inspection, measurement, and sampling are too widely or otherwise inappropriately spaced to outline the ore completely or to establish its grade throughout.

"'Inferred ore' is ore for which quantitative estimates are based largely on broad knowledge of the geologic character of the deposit and for

¹ Prospectus, The Cleveland-Cliffs Iron Co., Dec. 10, 1935. Lehman Bros., Field, Gloré & Co., Hayden, Stone & Co., p. 9.

² "Investigation of National Resources," Subcommittee Hearings, U.S. Senate Committee on Public Lands, May 15-20, 1947; pp. 119-20.

which there are few, if any, samples or measurements. The estimates are based on an assumed continuity or repetition for which there is geologic evidence; this evidence may include comparison with deposits of similar type. Bodies that are completely concealed may be included if there is specific geologic evidence of their presence. Estimates of inferred ore should include a statement of the specific limits within which the inferred ore may lie."

The record includes a copy of a report of October 21, 1952 made to the United States Government by a firm of Metallurgists and Chemical Engineers concerning the amount and grade of nickeliferous reserves in Nicaro mines and the neighboring area of Moe Bay, Cuba, in which the United States Government was interested. In discussing the proven, probable and inferred or possible reserves, the report states: "The figures for probable and inferred reserves are little more than educated guesses. Similarly the grade of the reserves is mostly unknown."

The Commission has had occasion to consider other claims based on mining concessions in Moe Bay, Cuba. In those cases, the Commission allowed only the "measured" or "proven ore" reserves. (See *Claims of Moe Bay Mining Company and Cuban American Nickel Company*, Claim Nos. CU-2619 and CU-2573.)

Upon consideration of the entire record, the Commission finds no valid reason for allowing any amount on account of the asserted probable and possible ore reserves. Accordingly, the portion of the claim based upon probable and possible ore reserves is denied.

The Commission finds that on October 24, 1960, the date of loss, claimant's proven ore aggregated 33,300,000 tons. The value thereof must therefore be determined.

The record shows that pursuant to express provisions in contracts to which the United States Government was a party, the United States Government was to bear the expenses of mining, refining and related operations, as well as capital expenses for the term of the contracts, ending on March 10, 1969 (Appendix A). In addition, the contracts set forth the amounts the United States Government was required to pay claimant for the ore, which were the market prices of refined nickel F.O.B Pittsburgh, Pennsylvania, as determined by the United States Government.

Accordingly, claimant has computed its loss with respect to the proven ore reserves on the basis of the contracts. As already noted, claimant's computations cover 1,300,000 tons of ore for the years 1961 through 1967, when the United States Government's supply would have been exhausted, and 2,100,000 tons per year thereafter, representing the annual capacity of claimant's plant. Applying the market prices in effect during the years in question, claimant's computations show the following (Appendix D) :

Year	Tons of Proven Ore	Value	Per Ton Amount
1961	1,300,000	\$1.783	\$ 2,317,900.00
1962	1,300,000	1.835	2,385,500.00
1963	1,300,000	1.814	2,358,200.00
1964	1,300,000	1.814	2,358,200.00
1965	1,300,000	1.814	2,358,200.00
1966	1,300,000	1.842	2,394,600.00

1967	1,300,000	1.982	2,576,600.00
1968	2,100,000	1.982	4,162,200.00
1969	2,100,000	1.982	4,162,200.00
1970	2,100,000	1.982	4,162,200.00
1971	2,100,000	1.982	4,162,200.00
1972	2,100,000	1.982	4,162,200.00
1973	2,100,000	1.982	4,162,200.00
1974	2,100,000	1.982	4,162,200.00
1975	2,100,000	1.982	4,162,200.00
1976	2,100,000	1.982	4,162,200.00
1977	2,100,000	1.982	4,162,200.00
1978	2,100,000	1.982	4,162,200.00
1979	1,100,000	1.982	2,180,200.00
Total	33,300,000		\$64,713,600.00

The Commission noted that for the entire period of claimant's computations ending in 1979, no amounts were deducted for mining, refining and related expenses, although the contracts with the United States Government were to end early in 1968. Therefore, the Commission inquired concerning the period following the termination of the contracts. Claimant's response was in the form of an affidavit from its Vice President, Richard V. Colligan.

That affiant states that in view of the increased value of nickel, the likely result was "that claimant would sell its ore for use in the Nicaro plant on at least as favorable a basis as provided in the Ore Contract." On this basis, claimant states that it is justified in computing the value of its ore without deducting any amounts for mining, refining and related expenses.

It is noted that the contracts with the United States Government provided that the price of the refined nickel was to be \$0.025 per pound, plus \$.0008 for each \$0.01 increase in market price, as determined by the United States Government, over \$.30 per pound delivered in Pittsburgh, Pennsylvania, or minus that amount if there were a decrease in the market price. Claimant has submitted evidence tending to show that the market prices for refined nickel at Pittsburgh, Pennsylvania were approximately as follows: \$0.74 per pound from January 1, 1961 to June 30, 1961; \$0.82 per pound from July 1, 1961 to May 23, 1962; \$0.79 per pound from May 24, 1962 to October 31, 1966; and \$0.87 per pound as of November 1, 1966. It further appears that the market price of refined nickel rose after November 1, 1966. Claimant has computed its claim for the period 1968 to 1979 on the basis of the prices in effect as of November 1, 1966.

The said report of October 21, 1952 to the United States Government also sets forth estimated operating costs as of 1952 for the Nicaro plant. Upon consideration thereof in the light of the entire record, the Commission finds that the prices per pound of refined nickel, as computed by claimant, are fair and reasonable. The sole remaining question insofar as the value of claimant's proven ore reserve is concerned is the discount rate applied by claimant to arrive at the value of its ore on the date of loss.

Claimant's Appendix D indicates that it has applied a 6% per annum discount rate for proven ore, a 10% rate for probable ore and a 15% rate for possible ore. The results of claimant's computations are not shown separately for each type of ore but are lumped together. In response to the

Commission's inquiries concerning the discount rate, an affidavit of May 27, 1971 was submitted from claimant's Vice President. Therein he states that he applied the said discount rates on the basis of the risks involved. Therefore, the proven ore valuation was subjected to the lowest discount rate and the possible ore valuation was subjected to the highest rate.

The affidavit was supported by a copy of another excerpt from "Examination and Valuation of Mineral Property", *supra* at 447-465. That publication discusses the valuations of mines in Michigan and states that the "generally accepted figure for interest on capital in a nonspeculative industry is six per cent . . . The Tax Commission adopted the six per cent rate for both the interest on the investment and the return of the capital." Referring to the suggested six per cent rate, the authors state: "This is the procedure under ideal conditions; but in nearly every valuation one or more factors have to be adjusted in view of such expected future conditions as probably will differ from the past five-year record."

There can be no doubt that conditions in the mining industry in Cuba were not ideal. It is equally true that they cannot be compared with those prevailing in the state of Michigan for the purpose of this decision. The Commission therefore holds that claimant's suggested discount rate of 6% per annum is inappropriate. In the *Claims of Moa Bay Mining Company, et al., supra*, the Commission held that the proper discount rate to apply to mining concessions in Cuba in order to arrive at the value of future amounts on the date of loss was 12% per annum.

Accordingly, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is the result obtained from applying a discount rate of 12% per annum to the yearly valuations of the ore for the period 1961 to 1979, as shown in Appendix D and set forth above. Upon applying that discount rate to the foregoing valuations, the Commission finds that claimant's proven ore had the following aggregate valuation on October 24, 1960, the date of loss:

<i>Year</i>	<i>Gross Value</i>	<i>Net Value</i>
1961	\$2,317,900.00	\$ 2,069,553.24
1962	2,385,500.00	1,901,706.29
1963	2,358,200.00	1,678,519.60
1964	2,358,200.00	1,498,678.55
1965	2,358,200.00	1,338,106.35
1966	2,394,600.00	1,213,178.59
1967	2,576,600.00	1,165,522.43
1968	4,162,200.00	1,681,041.82
1969	4,162,200.00	1,500,930.94
1970	4,162,200.00	1,340,116.02
1971	4,162,200.00	1,196,532.61
1972	4,162,200.00	1,068,332.69
1973	4,162,200.00	953,868.02
1974	4,162,200.00	851,669.36
1975	4,162,200.00	760,417.29
1976	4,162,200.00	678,946.39
1977	4,162,200.00	606,199.46
1978	4,162,200.00	541,252.49
1979	2,180,200.00	253,136.48
Totals	\$64,713,600.00	\$22,297,708.62

OTHER ASSETS

On the basis of the evidence of record, the Commission finds that claimant owned property, discussed further below, which was appurtenant to its mining operations in Cuba. The Commission further finds that all such property was taken by the Government of Cuba on October 24, 1960 when claimant's mining concessions were taken.

In the opinion of claimant's Vice President, the overall value of claimant's mining concessions and other assets in Cuba were in excess of \$42,600,000.00, of which \$42,082,362.00 represents the asserted value of the mining concessions, and \$518,000, generally represented the other assets.

Claimant asserts that the value of \$518,000.00 included surface rights and timber which claimant had purchased in 1940 and 1956 at a cost of \$321,000.00; and furniture and fixtures, drilling and other equipment and vehicles at the Nicaro plant and in Santiago and Havana, Cuba, as well as a residence, warehouse and office buildings at the Nicaro plant, valued at \$197,000. Claimant states that in addition to its investment the values of all these properties must be measured in terms of research and efforts to develop the mining properties.

As indicated above, the record shows that claimant had developed an improved process for the commercial exploitation of nickeliferous ores in Cuba. In that program alone, claimant expended two years in research, which undoubtedly required a substantial investment of money. Claimant's program was successful, and the new process inured to the benefit of the United States Government. The Nicaro plant continued to function until nationalization by Cuba on October 24, 1960.

On that date, claimant's organization in Cuba included appropriate real and personal property in order to extract and process the ores. Claimant states that it is unable to supply a complete inventory of each item because many of its records were left in Cuba. However, claimant's books and records disclose that its investments in tangible real and personal property at the Nicaro plant aggregated \$197,000.00.

On the basis of the evidence of record, the Commission finds that claimant owned certain items of real and personal property at its Nicaro plant in Cuba which had a value of \$197,000.00 on October 24, 1960, the date of loss.

Claimant also asserts the loss of its investment in obtaining the concessions and surface rights, including timber. While it appears from the evidence of record (Appendix J) that claimant had acquired hardwood trees in 1940, there is no evidence to establish that any such trees existed twenty years later on the date of loss, or the value thereof if such trees did exist. No amounts are being allowed for claimant's investments in the mining concessions or surface rights valued by claimant at \$321,000 because it is considered that they are not established beyond being covered by the allowance herein for the value of the ore and other investments.

Upon consideration of the entire record, the Commission finds that claimant's valuation of its other physical assets in Cuba is fair and reasonable. Accordingly, the Commission finds that the aggregate value of claimant's physical plant at Nicaro on October 24, 1960, the date of loss, was \$197,000.00 as aforesaid.

Claimant has stated that the extent of its investment in the properties herein must not be measured in terms of acquisition costs, but "in terms of the years of research and effort of an experienced and competent orga-

nization to develop an extremely valuable mining property." While the Commission recognizes that claimant did engage in research with respect to the mines in Cuba, the record contains insufficient evidence and information which could be used to determine the value thereof.

The Commission finds that claimant has failed to sustain the burden of proof with respect to this portion of the claim. Accordingly, this portion of the claim is denied.

Claimant's losses on October 24, 1960 are summarized as follows:

<i>Item of Property</i>	<i>Amount</i>
Mining Concessions	\$22,297,708.62
Other Assets	197,000.00
Total	<u>\$22,494,708.62</u>

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that NICARO NICKEL COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Two Million Four Hundred Ninety-Four Thousand Seven Hundred Eight Dollars and Sixty-Two Cents (\$22,494,708.62) with interest at 6% per annum from October 24, 1960 to the date of settlement. Dated at Washington, D.C., June 30, 1971.

IN THE MATTER OF THE CLAIM OF THE FIRST NATIONAL BANK OF BOSTON

Claim No. CU-2268—Decision No. CU-3071

Book value rejected as method of valuation where additional evidence indicates that it is not equitable to claimant.

Fair market value is proper method of evaluation where available evidence is sufficient to make application thereof.

FINAL DECISION *

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$12,496,000.00, was presented by THE FIRST NATIONAL BANK OF BOSTON based upon asserted losses resulting from the nationalization of claimant's six branches in Cuba and upon the nonpayment of certain debts.

By Proposed Decision dated September 11, 1968, the Commission found that claimant qualified as a national of the United States, that its six branches in Cuba were nationalized by the Government of Cuba on September 17, 1960, and that the most appropriate measures of the value of the six

* Book value had been applied in the Commission's Proposed Decision. This Final Decision was issued after objections were filed and an oral hearing was held on Dec. 9, 1968.

branches at the time of loss was their book value of \$5,651,384.36, from which was deducted the sum of \$4,069,114.69 recovered by claimant subsequent to the nationalization, leaving a net loss for the six branches of \$1,582,269.67. The Commission further found that claimant had suffered an additional loss of \$1,666,845.57 within the meaning of Title V of the Act in connection with certain letters of credit issued by the Cuban branches prior to their nationalization; and certified that claimant had suffered a total loss in the amount of \$3,249,115.24. A portion of the claim based upon debts owed to claimant by Cuban Telephone Company and Mid-Century Service, Inc., was denied on the ground that Section 505(a) of the Act precludes consideration of claims based upon debts owed by entities which qualify as United States nationals unless the debts were charges on property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant filed objections to the Proposed Decision, objecting specifically to the value placed upon its six Cuban branches, and to the denial of the portion of the claim based upon the debt owed by Cuban Telephone Company. A brief *amicus curiae* was filed by counsel for International Telephone and Telegraph Corporation (Claim No. CU-2615). At an oral hearing on December 9, 1968, the testimony of witnesses was presented and argument was made by counsel for claimant and *amicus curiae*. A subsequent brief *amicus curiae* was filed by counsel for Colgate-Palmolive Company (Claim No. CU-0730).

Value of Cuban Branches at time of loss

In its objections, claimant urges that its six branches be valued at \$12,200,000.00 at the time of loss, as going concerns. Pointing out that Section 503 (a) of the Act requires the Commission to "take into account the basis of valuation most appropriate to the property and equitable to the claimant," it argued strongly for the adoption of either the "direct earnings method" or the "rate of return/net worth method" that it had suggested previously as routes to the going concern value of the six branches.

In the "direct earnings method," yearly earnings are multiplied by a multiple determined by various indices of performance (deposit growth, net worth increase, and return on investment equity). Claimant multiplied the 1959 earnings of its branches by 12.7 (obtained from the performance of 46 American banks), by 13.9 (from four American "growth" banks), and by 9.9 (from three Latin-American banks), and multiplied the average earnings for the 5 years of 1955 through 1959 by 12.7 (from the 46 American banks) and 15.9 (from the four "growth" banks). It then took the average of the five results, and arrived at \$12,603,096.00 for the value of the six Cuban branches.

In the "rate of return/net worth method," 1959 book value was multiplied by a multiple derived from analysis of the rate of return on invested equity in five groups of banks, and their market value of a percentage of net worth. The Cuban branches earned a 20.6% return on equity in 1959, and a 24.5% return for the 5 years from 1955 through 1959, yielding, by comparison with other banks, multiples of 2.34 and 2.72, respectively, to be applied to 1959 book value. The results of these two averaged \$12,222,126.00.

The admitted weaknesses of the suggested methods are the difficulty in determining the proper multiple to be used, and the inability to make a comparison of claimant's Cuban branches with other Cuban banks due

to the unavailability of data concerning such banks. In its Proposed Decision, the Commission resorted to book value, after stating that it was not convinced that the claimant's basis for evaluation, resting on a comparison of the six branches with a number of banks operating in the United States and three other non-Cuban banks, was valid.

In the course of the oral hearing, an expert witness, favoring the capitalization of earnings as a method of valuation, testified that in his opinion a lower multiple should be applied to earnings of the Cuban branches in order to determine their going concern value, than to the earnings of the claimant enterprise as a whole, in view of the inherent risk in conducting a business of this nature in a foreign country, subject to close governmental regulation, currency control, and possible fluctuation in the value of the foreign currency. Even offsetting this by the fact that claimant's Cuban branches yielded a greater return on investment than did claimant bank as a whole, he suggested a multiple of 10 times earnings. This, if applied to the branches' 1959 earnings, would yield a going concern value of \$9,948,550.00, or \$9,336,810.00 if applied to the average annual earnings for the 5-year period from 1955 through 1959. However, the witness admitted that his reduction of the multiple to 10 represented a crude and arbitrary adjustment, and was entirely a matter of judgment.

As an alternative method of calculating the value of its Cuban branches, claimant suggested in its brief that the fair market value of the branches—be determined from the fair market value of the whole enterprise on the share of stock in the corporation for the year of 1959 by the total number of shares outstanding on December 31, 1959, claimant arrived at a market value for the whole enterprise of \$249,200,000.00. The 1959 net income of the six branches was \$994,855.00 after Cuban taxes, representing 4.62% of the net income of claimant bank as a whole. Applying this percentage to \$249,200,000.00 yielded a value of \$11,513,049.00 for the branches. Recognizing that this calculation failed to reflect the effect of 1959 United States income taxes on the net income of the branches, claimant submitted a recalculation in an addendum to its brief, showing a net income of \$676,740.00 for the Cuban branches after Cuban and United States taxes. This represented 3.215% of the similarly adjusted net income of the whole enterprise, indicating a fair market value for the six branches of \$7,999,320.00.

The Commission has recognized, and indeed Section 503 (a) of the Act makes abundantly clear, that book value is not always the most appropriate basis for valuation of nationalized property. Determinations of the Commission must be made on the basis of evidence available to it, however, and at times the available evidence permits *only* the use of book value. In the instant case, the nature of the business conducted is such that earnings potential reflected in the market price of the stock is of greater significance than asset value in the determination of true value of the enterprise at any given time. The Commission is persuaded that at the time of loss the claimant's six Cuban branches had a value exceeding their book value; and the quantity and quality of evidence submitted places the Commission in a position to determine that the "basis of valuation most appropriate to the property and equitable to the claimant" is that of allotting to the branches the portion of the fair market value of the whole enterprise which the net income of the branches bore to the net income of the whole. Accordingly, the Commission finds that the value of the six branches on September 17, 1960, was, \$7,999,320.00 and that, after deduction of the re-

covered \$4,069,114.69, claimant suffered a loss in the amount of \$3,930,205.31 as a result of the nationalization of the six branches by the Government of Cuba.

In addition, the finding of loss of \$1,666,845.57 for payments in connection with letters of credit is affirmed.

DEBT OF CUBAN TELEPHONE COMPANY a/k/a CUTELCO

The pertinent history of this matter is that Cutelco was organized in the United States but all or nearly all of its assets were located in Cuba. By Cuban Government Resolution No. 1 published August 6, 1960, pursuant to Law No. 851, its assets were nationalized. At that time it owed claimant bank \$290,000. This amount was asserted to be compensable in this case but was disallowed by our Proposed Decision because, under Section 505(a) of the Act, it was held to be an unsecured debt of a United States national. The Commission previously determined the nationality issue based on information furnished the State Department in 1960 by the International Telephone and Telegraph Corporation. The United States interest was then found to be 60.75%, whereas anything over 50% would place Cutelco in the category of claimants covered by Section 505(a).

It is now asserted by a new affidavit that in fact Cutelco had slightly less than 50% American ownership on the date of the taking. We, however, find and hold that this evidence does not overcome that previously adduced and already ruled upon by our Commission. Also, Amicus *Curiae* urge that Cutelco Was dormant or defunct after its properties were taken, but we fail to see how that could alter the statutory boundaries.

Also, the claimant urges that the Cuban Nationalization Decree should be interpreted as an assumption by the Cuban Government of the debts of Cuteheco, including its debts to the claimant. It is not necessary for the Commission to determine whether the claimant's interpretation of the Cuban Decree is correct, for even if the Cuban Government specifically assumed the liability of Cutelco to the claimant, this would not support a certification in its favor.

The statutory function of the Commission is to determine the rights of persons whose property has been nationalized or otherwise taken. When the Cuban Government nationalized the property of Cutelco it did not thereby nationalize any property of the First National Bank of Boston. Therefore, the bank cannot prevail on this issue.

That does not mean, however, that the Bank is without a remedy. Cutelco, as a United States national, has a claim filed on its behalf with the Commission by one of its stockholders (viz. CU-3682) for the nationalization of its assets. The bank can in fact protect itself by obtaining a judgment against Cutelco and levying on any assets it may then have, including any recovery on its claim against the Cuban Government. A Federal court recently reached a similar conclusion as to injurance contracts in the case of *Blanco v. Pan-American Life Insurance Company, et al.*, 221 F. Supp. 219.

Finally, we find no merit to the claimant's contention that the legislative history of the Act exempts banks from the operation of Section 505(a). This was considered previously by the Commission and rejected in the Proposed Decision wherein the Commission found that the language of the section itself is quite clear and contains no exception in favor of banks.

For the reasons set forth above, the denial of the portion of the claim based upon a debt owed to claimant by Cuban Telephone Company is affirmed.

Debt of Mid-Century Service, Inc.

In its Proposed Decision, the Commission denied a portion of the claim based upon a debt owed to claimant by Mid-Century Service, Inc., on the same grounds as applied to the indebtedness of Cuban Telephone Company. Although no objection was made to this portion of the Proposed Decision, upon reexamination of the record the Commission is moved to reconsider its holding in this respect.

It appears from the record that Mid-Century Service, Inc., was organized in 1950 under the laws of the State of New York, to operate principally as buying agent for Grabiél Sisto y Cia, S.A., a Cuban corporation which operated a large department store in Havana, and which was nationalized by the Government of Cuba on October 13, 1960 pursuant to Law No. 890. The Commission finds that claimant extended a loan to Mid-Century Service, Inc., in the amount of \$30,000.00 on September 11, 1959, that it was increased to \$40,000.00 on September 18, 1959, that subsequent payments reduced the balance due to \$6,000.00 after which Mid-Century Service, Inc. became insolvent, its only asset being an account receivable from Grabiél Sisto y Cia, S.A. The Commission further finds that by an instrument dated September 16, 1959, Grabiél Sisto y Cia, S.A. had guaranteed to claimant the fulfillment of all obligations of Mid-Century Service, Inc., to a maximum of \$50,000.00, waiving presentation, protest, and all demands and notices, and assenting to "the addition or release of any other person primarily or secondarily liable."

In view of this guaranty, the Commission finds that the unpaid balance of \$6,000.00, as the debt of a nationalized enterprise (Grabiél Sisto y Cia, S.A.), constituted "property" as defined in Section 502(3) of the Act, and that its loss as a result of the nationalization of Grabiél Sisto y Cia, S.A. on October 13, 1960 gives rise to a compensable claim under the Act.

Conclusion

The Commission concludes that claimant suffered a total loss within the meaning of Title V of the Act in the amount of \$5,603,050.88.

CERTIFICATION OF LOSS *

The Commission certifies that THE FIRST NATIONAL BANK OF BOSTON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Million Six Hundred Three Thousand Fifty Dollars and Eighty-eight Cents (\$5,603,050.88), with interest thereon at 6% per annum on \$5,597,050.88 from September 17, 1960, to the date of settlement, and on \$6,000.00 from October 13, 1960, to the date of settlement.

Dated at Washington, D.C., Feb. 26, 1969.

* By an Amended Final Decision of August 19, 1970, the Commission increased the Certification of Loss to \$5,904,940.88 on the basis that a portion of this claim for debts due from the Cuban Telephone Company were allowable under the Act, following the holding in the *Claim of International Telephone and Telegraph Corporation*, Claim No. CU-2615, reported herein, which decision was entered as the Commission's Final Decision on July 27, 1970.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$12,496,000.00 was presented by THE FIRST NATIONAL BANK OF BOSTON based upon asserted losses resulting from the nationalization of claimant's six branches in Cuba and upon the non-payment of certain debts.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643—1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503 (a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the Bank has certified that claimant is a national banking association organized under the laws of the United States and that at all times between 1903 and April 27, 1967, more than 50 per centum of the outstanding capital stock of the claimant has been owned by United States nationals. An officer of claimant Bank states further than on December 1, 1967, 5,959,830 shares of stock were held by 21,098 shareholders who were residents of the United States and presumed to be nationals of the United States and 40,170 shares were held by 91 non-residents presumed to be nationals of other countries. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The record reflects that claimant Bank maintained six branches in Cuba, including three located in Havana, and one each in Sancti-Spiritus, Santiago de Cuba and Cienfuegos.

On September 17, 1960, the Government of Cuba published in its Official Gazette Resolution No. 2 (pursuant to Law 851 of July 6, 1960). Resolution No. 2 listed as nationalized the branches and agencies in Cuba of THE

FIRST NATIONAL BANK OF BOSTON, substituting the Government of Cuba in place of the Bank with respect to both the assets and liabilities thereof. Accordingly, the Commission finds that the property in Cuba of THE FIRST NATIONAL BANK OF BOSTON was nationalized on September 17, 1960 by the Government of Cuba, which also assumed the liabilities of the branches in Cuba of said Bank.

Claimant has asserted its loss in the amount of \$12,496,000.00 as follows:

\$12,200,000 incurred by reason of taking of the branches

\$296,000 losses incurred by the Boston Office activities unrelated to the branches

Claimant has stated its initial book loss as \$6,703,300.26, composed of three parts:

Net worth of 6 branches:

Capital and reserves.....	\$3,745,000.00	
Unremitted earnings:		
1959	1,196,690.32	
1960	700,705.38	
Reserve for loan losses.....	8,988.66	\$5,651,384.36

Letter of credit payments by Boston

office..... 1,697,386.40

Havana branch credit.....\$768,631.97

Other receipts.....172,838.53

941,470.50

755,915.90

Loan to Cuban Telephone Co ----- 290,000.00

Balance of Loan to Mid-Century, Inc 6,000.00

Total 6,703,300.26

In 1961, it is stated, the Bank received duplicate United States Treasury bonds with a face amount of \$3,000,000 to replace bonds seized by the Cuban Government. The bonds were entered on the Bank's books at \$2,966,250, the market value on date of reissuance. Net recoveries from 1961 through 1966 from various unspecified sources amounted to \$191,705.77. Thus the net book loss was reduced to \$3,545,344.49:

Initial book loss.....	\$6,703,300.26
Bonds.....	\$2,966,250.00
Recoveries.....	191,705.77
	3,157,955.77

Total 3,545,344.49

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded

that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider: i. e., fair market value, book value, going *concern* value, or cost of replacement.

In amplification of the initial asserted loss of the branches, claimant has submitted a Statement of *Condition* of the branches as of September 16, 1960, as follows:

ASSETS

Cash and due from banks.....	\$29,488,518.44
U. S. Government obligations.....	3,001,885.22
Other securities.....	16,626,675.00
Loans and discounts.....	21,291,950.21
Customers' liability for acceptances.....	11,338.85
Furniture and fixtures.....	654,140.70
Other assets including accounts receivable, interest re- ceivable, and prepaid expenses.....	437,315.91
Total assets.....	71,511,824.33

LIABILITIES

Capital.....	1,000,000.00
Reserve for contingencies.....	2,745,000.00
Reserve for loans.....	8,988.66
Unremitted earnings—1959.....	1,196,690.32
Unremitted earnings—1960.....	700,705.38
Total.....	5,651,384.36
Demand deposits.....	\$44,281,678.24
Time deposits.....	12,563,523.97
Deposits of banks.....	527,938.74
Other deposits.....	8,038,706.35
Acceptances executed.....	11,338.85
Other liabilities.....	437,253.82
	65,860,439.97
Total.....	71,511,824.33

In support of the above, claimant submitted certified statements of condition of the six branches, with a consolidated statement reflecting certain adjusting entries, as shown below:

RESOURCES

Bills discounted.....	\$1,698,213.04
Time loans.....	4,265,586.44
Time loans secured.....	5,035,379.10
Time loans matured secured.....	2,974,947.20

Demand and short-term loans	6,855,261.48	
Overdrafts in current accounts	5,284.83	
Advances against merchandise	6,000.00	
Foreign bills purchased	172,224.00	
Past due obligations	1,160.43	
Customers' liability acceptance a/c matured	277,893.69	
Total loans and investments		\$21,291,950.21
Bonds and securities owned (after debit adjustment of \$15,375.00)	16,463,375.00	
U.S. Government bonds owned (after credit adjustment of \$3,739.78)	3,001,885.22	
Stock Banco Nacional de Cuba	163,300.00	
Due from head office	606,838.71	
Due from foreign banks	270,728.99	
Banco Nacional de Cuba special account	50,000.00	
Cash tellers	710,456.24	
Cash reserve in vault	2,288,570.00	
Cash reserve in Banco Nacional de Cuba	23,406,269.91	
		26,405,296.15
Cash items local	11,588.68	
Cash items in transit (after debit ad- justment of \$461,780.47)	504,722.35	
Clearing items	1,572,186.89	
Returned checks pending liquidation.....	57,233.03	
Revenue and postage stamps	9,782.32	
Sight and short-time bills purchased ...	11.97	
Postal money orders	129.35	
		2,355,654.59
Accounts receivable	25,784.47	
Collection department revenue stamps	3,356.20	
		29,140.67
Furniture and fixtures (after credit ad- justment of \$5,269.72)	135,685.83	
Repairs and alterations (after credit adjustment of \$7,990.29)	518,454.87	
		654,140.70
Interest receivable	393,948.80	
Commissions receivable	751.96	
Foreign exchange income receivable	2,289.53	
Service charges receivable	165.00	
Prepaid insurance and expenses	10,941.36	
Miscellaneous	78.59	
Total other assets		408,175.24
Customers' liability a/c acceptances		11,338.85
Total		71,511,824.33

FOREIGN CLAIMS SETTLEMENT COMMISSION

LIABILITIES

Current accounts.....	\$40,066,277.11	
Current accounts inactive.....	645,580.02	
Special deposit accounts.....	677,318.38	
U.S. Savings deposits.....	38,852.74	\$41,429,028.25
Certified checks.....	2,158,432.69	
Managers checks.....	2,790,849.99	
Managers checks—Exchange department	2,659.17	
Branch checks.....	258.15	
Inter-bank transfers.....	180,288.95	
Legal deposits (embargoes, etc.).....	68,066.18	
Drafts and payments advised unpaid.....	931.31	
Suspense accounts.....	212,795.32	
Collection suspense account.....	9,604.20	
Eco. Nac. de Cuba—Surcharge Law		
566	27.00	
Coll. effected pending cover of exchange	2,534,630.47	
Government taxes.....	27,526.82	
Anticipated payments letters of credit.....	2,906,217.42	
Time deposits matured	352,914.72	
Savings bonds matured.....	10,500.00	
Time deposits matured and frozen.....	19,285.00	
		11,274,987.37
Due to foreign banks—their accounts.....	1,855.86	
Due to local banks—their accounts.....	526,082.88	
		527,938.74
Savings deposits	2,287,442.24	
Savings deposits—Staff.....	85,935.04	
Savings deposits—Inactive.....	91,757.27	
		2,465,134.55
Savings bonds.....	113,500.00	
Time deposits.....	9,602,189.70	
		9,715,689.70
Due to foreign banks our A/cs. O.D.....	9,974.34	
Other liabilities (after adjustments of record).....	426,348.17	
Acceptances by bank.....	11,338.85	
Total.....		65,860,439.17
Reserve for loans.....	8,988.66	
Due to head office reserve contingencies	2,745,000.00	
Due to head office capital account.....	1,000,000.00	
Unremitted earnings—1959.....	1,085,880.29	
Unremitted earnings—1960.....	491,305.59	
		5,651,384.36
Total.....		71,511,824.33

Claimant submits that its claim is not based on book loss but on the loss of the branches as valuable going concerns and as integral parts of the Bank, while recognizing the difficulty of making a precise measurement of such value, but contending nevertheless that there can be no doubt the branches had a value far in excess of the book figures.

In support of its contention claimant asserts several methods are available to determining going concern valuation for a particular banking operation: The direct earning method, reaching a valuation figure by multiplying the yearly earnings of the bank by a multiple determined by various indices of bank performance; and the rate of return/net worth method, analyzing the relation between the bank's rate of return on its invested capital and the price of its stock in relation to its net worth.

It is said that both of these methods require a comparison between the bank being evaluated and a representative sampling of other banks and that the best approach would be to make comparisons with other Cuban banks. Claimant states, however, that information concerning stock in Cuban banks in the period under consideration was not available since no stock was publicly traded and it has therefore utilized the statistical relationship existing in the United States and other Latin and South American countries between bank stock prices and other operational data in reaching valuation figures. Claimant has concluded that the application of these two techniques gives a going concern value to the branches of \$12,200,000.00.

Claimant has submitted figures to reflect that the direct earnings of the Cuban branches averaged \$933,681 for the five-year period 1955 through 1959, and indicates that this amounts to a 24.5% return on the Cuban investment. To select an earnings multiple, claimant considers deposit growth, net worth increase and return on investment equity, and has submitted schedules comparing data in these areas as applied to certain United States banks. In each of the schedules set out by claimant, the results appear higher than for the United States banks with which comparison is made.

The appropriate earnings multiple, according to claimant, may be taken as the price/earnings ratio of the stock of the bank groups with which the Cuban branches are being compared. Claimant then finds that for the period 1956 through 1960, this is 12.7 for a composite of 46 United States banks; it is 15.9 for four so-called "growth" banks in the United States; and appears to be 9.9 for three Latin and South American banks. Claimant then proceeds to average these results, arriving at \$12,603,096 as the average value based on price-earnings ratios.

The last three banks appear to be the only ones in which a stock price has in fact been utilized in the computations of claimant.

Proceeding to the rate of return/net worth method of valuation, claimant points out that the greater the return on invested equity capital, that is, net worth, the higher the stock will generally sell in relation to net worth. Tabulations and graphs set out by claimant, based on the same comparison banks, result in value multiples of 234% and 272%, arriving at \$12,222,126 as the average computed value.

The Commission has considered all of the evidence and contentions of the claimant with respect to its asserted value of the six branches in Cuba. The Commission is not convinced, however, that the basis for evaluation, resting on a comparison of the six branches with a number of banks operating in the United States, and three non-Cuban banks, affords a valid and equitable

evaluation. Consequently, the Commission rejects the asserted valuation and finds, in the absence of other substantive evidence, that the book value is the most appropriate value.

The net worth of the banks, collectively, may be found in the excess of assets over the contractual liabilities, or by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, in this case the calculation of net worth is seen as follows:

Original capital and reserves	\$3,745,000.00
Unremitted earnings, 1959	1,196,690.32
Unremitted earnings, 1960	700,705.38
Additional loan loss reserve	8,988.66
 Net worth	 5,651,384.36

With regard to the loss of the six branch banks, the Commission concludes that claimant sustained a loss in the amount of \$5,651,384.36 within the meaning of Title V of the Act as a result of the nationalization of said branch banks by the Government of Cuba on September 17, 1960.

Section 506 of the Act provides:

in determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

The record reflects that the loss sustained has been partially offset by credits and recoveries. In 1960, the Head Office maintained a branch credit balance in the amount of \$768,631.97 and it obtained certain recoveries in the amount of \$172,838.53. In addition, in 1961, claimant received duplicate United States Treasury bonds with a face amount of \$3,000,000.00 to replace the bonds which were taken by the Government of Cuba at the time the branch banks were expropriated. The market value of the bonds on the date of reissuance was \$2,966,250.00. Claimant also obtained other recoveries during the years 1961-66 amounting to \$161,394.19. Accordingly, the total amount of the offset, \$4,069,114.69, must be deducted from the amount of the loss. The Commission therefore finds the net loss sustained for this portion of the claim as \$1,582,269.67.

The second portion of the claim is based upon the asserted loss of \$1,697,-386.40 for payments made by the Head Office of claimant under irrevocable letters of credit issued by the Bank's branches in Cuba prior to their nationalization. The record contains copies of the 332 Letters of Credit totaling \$1,697,157.15, an affidavit of a Vice President of claimant concerning the procedure involved in Letters of Credit transactions and a schedule pertaining to the transactions. The branch banks of claimant, because of their nationalization on September 17, 1960 by the Government of Cuba, were unable to remit to the Head Office the monies set aside for the Letter of Credit transactions. The Commission concludes that with regard to this portion of the claim, claimant sustained a loss within the meaning of Title V of the Act on September 17, 1960.

The record reflects, however, that E. I. Du Pont de Nemours & Co., the parent company of Du Pont Inter-America Chemical Co., Inc., the consignee on several Letter of Credit transactions, remitted \$30,311.58 to claimant as

payment for the Letters of Credit obligation owed by Du Pont Inter-America Chemical Co., Inc.

Section 506 of the Act, *supra*, provides that monies received on account of the same loss must be deducted. Accordingly, the sum of \$30,311.58 is deducted from the total amount due claimant on the Letters of Credit. The Commission concludes, therefore, that claimant also sustained a loss in the amount of \$1,666,845.57 within the meaning of Title V of the Act, as a result of nationalization of its branches in Cuba on September 17, 1960.

The third and remaining portion of the claim is based upon two loans made by the Head Office of claimant Bank to the Cuban Telephone Company and Mid-Century Service, Inc. The record reflects that both of these companies were organized under the laws of the United States. In addition, the record discloses that Cuban Telephone Company is 60.7550 percent owned by United States nationals and therefore qualifies as a United States corporation. Additionally, it appears that Mid-Century, Inc., was a small closely held New York Corporation.

Claimant has submitted a copy of a letter dated May 27, 1958 from the Export-Import Bank to claimant which recites an agreement between the two parties whereby claimant agreed to participate in a \$17,500,000.00 loan to the Cuban Telephone Company to the extent of \$290,000.00. The record contains copies of seventeen Participation Agreements dated between June 23, 1958 and December 31, 1959, issued by the Export-Import Bank certifying the purchase of beneficial interests in the indebtedness owing by the Cuban Telephone Company, totaling \$290,000.00. A copy of the ledger sheet of claimant reflects that a balance of \$200,000.00 was owing claimant on December 19, 1960.

The Government of Cuba published Resolution No. 1 dated August 6, 1960 (pursuant to Law No. 851 of July 6, 1960), which listed as nationalized the Cuban Telephone Company. It therefore appears that the Cuban Telephone Company sustained the loss of its assets in Cuba, on August 6, 1960.

Claimant contends (1) that this \$290,000.00 is compensable as the debt of a nationalized enterprise under Section 502(3) of the Act; (2) that it is compensable under Section 505(a); and (3) that under the terms of Resolution 1, the Government of Cuba assumed the liabilities of the Cuban Telephone Company.

Inasmuch as the Cuban Telephone Company qualifies as a United States national, its listing in Resolution 1 had the effect of taking of its assets by the Cuban Government. The company remained liable for its debts under the terms of Resolution 1.

There remains for determination the question whether a bank may recover for the non-payment of a debt owed by an entity qualifying as a United States national under Title V of the Act, if the debt owed is not a charge on property which has been nationalized, expropriated, intervened or taken by the Government of Cuba.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant contends that Section 505(a) limits recognition of claims for debts owed by United States corporations which were nationalized, but further asserts that the legislative history of Section 505 (a) makes it clear that this Section was not intended to apply to the claims of banks for debts arising out of loan activities.

The legislative history reflects the following with respect to Section 503(a) :

The purpose of this provision is to make clear that the Foreign Claims Settlement Commission does not have jurisdiction to consider claims over American nationals arising out of debts or other obligations for merchandise sold or services rendered to any corporation, association, or other entity organized under the laws of the United States or of any State, District of Columbia, or the Commonwealth of Puerto Rico provided, however, that the debt or obligation is not a charge on property taken by the Government of Cuba. It is not intended to exclude claims of banks, insurance companies, financial institutions, or other corporations, associations, or legal entities based upon the taking of assets in Cuba including assets in the form of debts or other obligations. Nor is it the purpose to exclude claims of those whose accounts in Cuban banks were nationalized, expropriated, intervened, or otherwise taken by the Government of Cuba. (Senate Report No. 701, 89th Congress, 1st Session, at page 4.)

Section 503(a) of the Act provides for recognition of claims against the Government of Cuba by United States nationals (such as THE FIRST NATIONAL BANK OF BOSTON) for losses resulting from the taking of property (or rights or interests therein) ; and Section 502(3) clarifies that such property may include debts of nationalized enterprises. Where there is an unsecured debt and the debtor qualifies as a claimant against Cuba, such claimant, as the Cuba Telephone Co., is entitled to maintain its own claim before this Commission. Whether it recovered, it would be expected to meet its obligations, and, as a United States national, would be answerable in an action brought against it in the appropriate United States Court. Under Section 503(a) a claimant such as THE FIRST NATIONAL BANK may maintain its claim before this Commission for a debt owed by a United States national, such as the Cuban Telephone Co., only if such a debt is a charge upon property which has been taken.

The cited portion of the legislative history confirms that legal entities may recover for the taking of their assets in Cuba, including debts, such as accounts receivable. Section 503(a) is quite clear and contains no exception in favor of banks, as contended. The legislative history was not intended to create any latent exceptions to the express language of the statute in this regard.

The other loan made by claimant was that to Mid-Century Service, Inc. The record reflects that Mid-Century Service, Inc. was the buying agent in the United States for Gabriel Sisto y Cia. S.A. and that it obtained a loan from claimant in the amount of \$40,000.00. Gabriel executed a Guaranty in the amount of \$50,000.00. The principal assets of Mid-Century Service, Inc. were the accounts receivable of Gabriel Sisto y Cia. S.A. and when Gabriel was nationalized by the Government of Cuba on October 13, 1960 (Law 890), Mid-Century was unable to make further payments to claimant. Claimant states it was unable to proceed against the Guaranty executed by Gabriel Sisto y Cia. S.A. because of its nationalization.

The record contains a copy of the bank's ledger sheet which reflects that

a balance of \$6,000.00 on said loan as of November 15, 1961 was owing to claimant.

The Commission holds that claim may not be maintained under Title V of the Act for debts of \$290,000.00 and \$6,000.00, due from entities qualifying as United States nationals, as the debts owed were not charges on property which was nationalized, expropriated, intervened or taken by the Government of Cuba. (See *Claim of Anaconda American Brass Company*, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

Accordingly, those portions of the claim are denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See *Claim of Lisle Corporation*, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum on \$3,249,115.24 from September 17, 1960 to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE FIRST NATIONAL BANK OF BOSTON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Million Two Hundred Forty-Nine Thousand One Hundred Fifteen Dollars and Twenty-Four Cents (\$3,249,115.24) with interest thereon at 6% per annum from September 17, 1960 to the date of settlement.

Dated at Washington, D.C., September 11, 1968.

IN THE MATTER OF THE CLAIM OF FIRST NATIONAL CITY BANK

Claim No. CU-2628—Decision No. CU-3835

Capitalization of net profits to determine the going concern value of a corporation is an appropriate method of determining the loss attributable to the nationalization or other taking of property by the Government of Cuba.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$7,513,028.81 plus interest, representing the gross amount of \$12,899,132.30 less offsets of \$5,386,103.49, was presented by FIRST NATIONAL CITY BANK based upon asserted losses of certain real and personal property at its branch offices in various areas of Cuba, and other asserted losses of personal property.

Under Title V of the International Claims Settlement Act of 1949 [79 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503 (a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property ineluding any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The evidence of record, including documentation filed by claimant in its claim against the Chinese Communist regime under Title V of the Act, as amended (Claim No. CN-0440), establishes that claimant was organized under the laws of the United States, and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that at all times during the period April 9, 1950 to July 2, 1969 (date of said certification), more than 95% of claimant's outstanding capital stock was owned by persons with addresses in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

CUBAN BRANCHES

The record shows that claimant maintained eleven branches in Cuba, including six in Havana, four of which were leased premises, and one each in Santiago de Cuba, Manzanillo, Caibarien, Cardenas and Matanzas. The Commission finds on the basis of the evidence of record that in connection with these operations, claimant owned certain real and personal property at seven of the locations, and owned certain personal property at four of the premises where it had also made substantial improvements to its leaseholds.

On September 17, 1960, the Government of Cuba published in its Official Gazette Resolution No. 2, pursuant to Law 851, which listed as nationalized the First National City Bank of New York, claimant's former name. The Commission, therefore, finds that claimant's real and personal property was nationalized by the Government of Cuba on September 17, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation

erty and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has computed its claim as follows:

Net Worth of Cuban branches including unremitted profits, as of August 23, 1960.....		\$5,961,037.41
Less net balance due Cuban branches from claimant.....		1,491,735.34
Net investment—book value.....		\$4,469,302.07
Excess of appraised value of real prop- erty, furniture, fixtures, etc. over book value.....		1,718,418.83
Net investment adjusted.....		\$6,187,720.90
Expenses incurred after August 23, 1960 as result of nationalization:		
Payments to Administrator.....	\$809,641.21	
Legal fees (estimated).....	50,000.00	
Assignments from employees.....	39,491.09	899,132.30
		\$ 7,086,853.20
Goodwill and Going Concern value.....	\$12,000,000.00	
Less net investment adjusted.....	6,187,720.90	5,812,279.10
Total.....		\$12,899,132.30

In effect, claimant is asserting the loss of goodwill and going concern value in the amount of \$12,000,000.00, plus \$899,132.30 for expenses incurred after August 23, 1960 as a result of the nationalization by Cuba.

The essence of claimant's contentions is that the Commission should apply the going concern value method in determining its losses in Cuba. Claimant states that it has been operating some of its Cuban branches since the 1920's and has built up the intangible asset, goodwill, which under normal accounting procedures and pursuant to bank regulations could not be recorded in its books and records. It adds that the book values for such items as real property, furniture and fixtures, and equipment, etc., reflect only the net cost values after depreciation, whereas expert appraisals indicate much higher values for these items of property on the date of loss. For these reasons, claimant asserts, in effect, that the use of book value would neither be appropriate nor equitable.

The evidence of record sustains claimant's contentions regarding book value. Using 1959 as the typical and representative year because it was the last full year of its Cuban branches' operations, claimant has submitted a substantial amount of supporting documentation. Copies of balance sheets, profit and loss statements, and schedules, as well as analysis sheets prepared on the basis of claimant's books and records for its Cuban branches, establish that claimant's cost of land at seven locations was \$496,716.51, and re-

mains recorded at that amount although nearly all of it was purchased in 1923 and 1924, approximately 36 years prior to the date of loss, during which time property values had risen substantially. It further appears that the original aggregate cost of the buildings owned by claimant on these sites was \$1,277,871.02, which is recorded in claimant's books at \$148,930.44, after depreciation, while the foundations and structures were currently insured in the aggregate amount of \$1,314,437.80.

The record includes appraisals (Exhibit 4) by an expert engineer and architect whose appraisals have been found reliable in other claims determined by the Commission under Title V of the Act. This expert has indicated that all of the premises were maintained in good condition, were modernized, and most of the structures, including those rented by claimant, had been improved by the addition of air conditioning systems installed at claimant's expense. The aggregate appraisal of the real property owned by claimant, including the furniture, fixtures and equipment installed by claimant, as well as the improvements made to claimant's leaseholds, is set forth as \$2,740,000.00 on the date of loss. We note that this amount is slightly higher than the appraisals of these items of property made by claimant's employees at the eleven sites.

Claimant has suggested several methods for arriving at the going concern value of its eleven Cuban branches. In order to illustrate each method, claimant has submitted the following information concerning its Cuban operations:

(a) The net earnings for the years ending December 23, 1955 through December 23, 1959, and for the period ending August 23, 1960, which show such net earnings (rounded off) as \$699,000.00, \$1,074,000.00, \$950,000.00, \$1,021,000.00, \$1,011,000.00, and \$303,000.00, respectively (Exhibit 2).

(b) The aggregate net worth of the eleven Cuban branches for the same period of time as under (a) above, adjusted to include claimant's internal appraisals of its land, buildings, furniture, fixtures, and equipment, which show such net worth (rounded off) as \$5,637,000.00, \$5,904,000.00, \$6,073,000.00, \$6,221,000.00, \$7,196,000.00, and \$7,679,000.00, respectively (Exhibit 3).

(c) A schedule indicating the results of a study made by claimant, which show the cost of acquisitions in 1959 and 1960 of Cuban branches by five American banks, from which claimant computed the percentage of book values which such acquisition costs represent, and averaged them to be 179.48% of the book values (Exhibit 5). With information available only as to three of those five American banks, claimant also derived the averaged multiple (14.2) of earnings of those three banks to the costs of the acquisitions (also in Exhibit 5).

(d) A table prepared by claimant which shows, with respect to five other American banks including claimant's, the ratio obtained by averaging the high and low market prices for the stock of these five banks in 1959 and dividing the result by the net earnings per share in 1959, indicating claimant as having the highest ratio, 15.1, and the average ratio as 13.3 (Exhibit 6).

(e) A schedule which shows four suggested methods of arriving at the going concern value of claimant's eleven Cuban branches (Exhibit 7), each one of which results in amounts in excess of the \$12,000,000.00 asserted by

claimant as the going concern value of its Cuban branches.

Claimant's Exhibit 7 shows the following methods of valuations:

1. Applying the average percentage of acquisition cost of Cuban branches compared to book value, 179.48 (Exhibit 5), to claimant's adjusted net worth as of August 23, 1960 of \$7,679,000.00 (Exhibit 3), the result is \$13,782,000.00.

2. Applying the average multiple (14.2) of earnings of acquired banks to costs of acquisition (Exhibit 5), the results are \$14,356,000.00 when using claimant's net earnings in 1959, i.e. \$1,011,000.00 (Exhibit 2); and \$14,867,000.00 when using its adjusted net earnings in 1959, asserted to be \$1,047,000.00, including additional earnings attributable to the Cuban operations, which additional earnings are not supported by the evidence of record.

3. Applying the price/earnings ratio of 15.1, asserted to be the appropriate one for claimant (Exhibit 6), to the net earnings and the asserted adjusted net earnings, as in paragraph 2 above, the results are \$15,266,000.00 and \$15,809,000.00, respectively.

4. Applying the average price/earnings multiple of 13.3 (Exhibit 6), to the same net earnings and asserted adjusted net earnings of claimant, the results are \$13,446,000.00 and \$13,925,000.00, respectively.

Claimant's suggestions have been carefully considered in the light of the entire record. The Commission finds methods 1 and 2 inappropriate inasmuch as it is clear (see paragraph 14 of affidavit of William T. Loveland, claimant's Vice President, dated May 26, 1967) that the acquisition of Cuban branches by the five American banks were unique and involved factors that are not established as comparable to claimant's Cuban branches. Accordingly, any conclusions drawn from such information would be speculative. In view of this and because here we do not have available percentages of profit of the Cuban branches as compared to the total profit of the entire organization of claimant the rationale of our decision in *The Claim of The First National Bank of Boston*, Claim No. CU-2268, also would not apply to this situation.

The Commission finds that the valuation most appropriate to the property and equitable to the claimant in this case is the going concern value, derived by capitalizing the average net earnings after Cuban taxes of claimant's Cuban branches during the years 1955 through 1959, prior to 1960 when Cuba's nationalization decrees had caused reductions in normal earnings. It is concluded, however, that the capitalization multiples suggested by claimant, 15.1 for claimant or the average, 13.3 (employed in methods 3 and 4), are inappropriate because they were computed from certain statistics relating to the operations of five American banks, whereas this claim involves bank branches in Cuba. From other information available to the Commission, it appears that the average multiple for three Latin-American banks was 9.9 in 1960, there being no data available for Cuban banks. (See *Claim of Julius J. Shepard*, Claim No. CU-0407, Amended Proposed Decision issued on April 30, 1969; reaffirmed in *Claim of General Dynamics*, Claim No. CU-2476.)

Having fully considered this entire matter, the Commission holds that the value of claimant's eleven Cuban branches should be computed on the basis of the branch's average net earnings after Cuban taxes for the period 1955 through 1959, capitalized at 10%.

As indicated above, the net earnings of claimant's eleven Cuban branches were \$699,000.00, \$1,074,000.00, \$950,000.00, \$1,021,000.00 and \$1,011,000.00 for the years 1955 through 1959, or an average annual net profit after deductions for Cuban taxes of \$951,000.00. Accordingly, the Commission finds that the aggregate value of claimant's eleven Cuban branches on September 17, 1960, the date of loss, was \$9,510,000.00.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

The record shows that claimant's loss has been offset partially by recoveries and credits. United States Treasury bonds in the amount of \$3,000,000.00 had been held by claimant's branches in Cuba and were included among claimant's assets that were taken by Cuba on September 17, 1960. These bonds were due to mature on September 15, 1961 and bore interest at 2354. It appears from the record that subsequent to the maturity date of the bonds, claimant received duplicate bonds in the face amount of \$3,000,000.00 plus accrued interest in the amount of \$38,111.41, which had been included in the financial statements for claimant's Cuban branches.

The evidence also establishes that Banco Nacional de Cuba, an agency of the Government of Cuba, had on deposit with claimant a credit balance in the amount of \$2,293,367.65, and that claimant had recovered other funds in the amount of \$54,624.43 which it stated should be applied to offset its claim against Cuba.

Accordingly, the aggregate amount of the offset, \$5,386,103.49, must be deducted from the amount of loss. The Commission therefore finds that the net loss sustained on September 17, 1960 with respect to this portion of the claim was \$4,123,896.51.

OTHER LOSSES ASSERTED

1. Commercial Credits

The record establishes and the Commission finds that claimant's Cuban branches had authorized with the approval of claimant certain commercial credits, covered by certain funds in Cuba in the amount of \$809,641.21. It further appears from the record that the Cuban authorities took these special funds upon nationalization of the Cuban branches. Subsequently, documents evidencing these credits were presented to claimant in New York and claimant was obliged to and did honor them. The Commission, therefore, finds that claimant sustained a loss on September 17, 1960 within the meaning of Title V of the Act in the amount of \$809,641.21 on account of the said commercial credits.

2. Legal Fees

Claimant states that it suffered a loss of \$50,000.00 (estimated) for legal fees, resulting from the nationalization of claimant's Cuban branches.

The Commission has held that claims for attorney's fees and expenses involved in contesting Cuba's taking of American-owned property are not within the purview of Title V of the Act. (See *Claim of E. R. Squibb Sons Inter-American Corporation*, Claim No. CU-2469, and *Claim of Illothe-*

son *Pan-American Chemical Corporation*, Claim No. CU-2470.) Accordingly, the portion of the claim based upon legal fees is denied.

3. *Assignments From Employees*

The record shows that six of claimant's United States national employees who had been stationed at claimant's Cuban branches, owned certain personal effects, automobiles and other personalty, having an aggregate value of \$39,491.⁰⁹.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected a confiscation of all goods, chattels, rights, shares, bonds and other securities of persons who fled from Cuba. The Commission finds that this law applied to claimant's said six employees who had left Cuba before that date, and concludes that all of the properties owned by these employees in Cuba were taken by the Government of Cuba on December 6, 1961 pursuant to Law 989. (See *Claim of Floyd W. Auld*, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 (July-Dec. 1966).)

The Commission finds on the basis of the evidence of record that claimant compensated these six employees for the full values of their properties, \$39,491.09, and received assignments from them in consideration of such payments. The record shows that assignments to claimant in the amount of \$27,301.¹⁰ were executed prior to December 6, 1961, the date of loss, and that assignments in the aggregate amount of \$12,189.⁹⁹ were executed by three of these employees, after December 6, 1961, the date of loss, as follows:

<i>Date</i>	<i>Amount</i>
December 19, 1961	\$2,624.40
December 22, 1961	3,255.50
February 14, 1962	6,310.09
Total	\$12,189.99

Accordingly, the Commission finds that claimant succeeded to and sustained losses within the meaning of Title V of the Act in the aggregate amount of \$39,491.09 with respect to this portion of the claim.

RECAPITULATION

The Commission concludes that claimant sustained losses as follows:

<i>Item of Property</i>	<i>Amount</i>
11 Cuban branches	\$4,123,896.51
Commercial credits	809,641.21
Assignments	39,491.09
Total	\$4,973,028.81

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

The Commission concludes, however, that with respect to the assignments executed after the date of loss, interest should be allowed only from the

respective dates of the assignments when claimant acquired those interests.
(See *Claim of Estate of Julius S. Wikler, Deceased*, Claim No. CU-2571.)

Accordingly, interest will be included as follows:

<i>From</i>	<i>On</i>
September 17, 1960	\$4,933,537.72
December 6, 1961	27,301.10
December 19, 1961	2,624.40
December 22, 1961	3,255.50
February 14, 1962	6,310.09
	<hr/>
Total	\$4,973,028.81

CERTIFICATION OF LOSS

The Commission certifies that the FIRST NATIONAL CITY BANK succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Million Nine Hundred Seventy-three Thousand Twenty-eight Dollars and Eighty-one Cents (\$4,973,028.81) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., September 3, 1969.

FINAL DECISION

Under date of September 3, 1969, the Commission entered its Proposed Decision certifying a loss in favor of claimant in the amount of \$4,973,028.81 plus interest. Subsequently claimant advised the Commission that it had recovered a further amount of \$109,297.77 on account of said loss over and above the recoveries already deducted, as set forth in the Proposed Decision. Claimant also indicated that it had no objections to file in this matter.

Upon consideration of the foregoing, it is

ORDERED that a Final Decision be entered as follows:

The Commission now finds that the aggregate amount of claimant's recoveries was \$5,495,401.26, which must be deducted from claimant's loss in the amount of \$9,510,000.00. Accordingly, the Commission finds that the net loss sustained by claimant on September 17, 1960 with respect to its Cuban branches was \$4,014,598.74.

It is further

ORDERED that the certification of loss, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that the FIRST NATIONAL CITY BANK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Million Eight Hundred Sixty-three Thousand Seven Hundred Thirty-one Dollars and Four Cents (\$4,863,731.04) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., November 14, 1969.

IS THE MATTER OF THE CLAIM OF INTERCONTINENTAL HOTELS CORPORATION

Claim No. CU-2521—Decision No. CU-4545

Value of Cuban corporation may be established by capitalizing its average annual net earnings for a three year period at 10cf, supplemented by the value of subsequent improvements to physical properties. The period where losses resulted in consequence of actions of the Government of Cuba, may be disregarded in ascertaining the value of Cuban enterprises.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$8,934,370⁵⁰, was presented by INTERCONTINENTAL HOTELS CORPORATION, based upon the loss of a stock interest in a Cuban corporation and a debt due from that corporation. The Cuban entity, Intercontinental Hotels Corporation of Cuba, S.A., is hereafter referred to as IHC of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. § 1643-1643k (1964), as amended, 79 Stat. 98S (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times all of claimant's outstanding capital stock was owned by Pan American World Airways, Inc., a corporation organized under the laws of New York. An authorized *officer* of claimant and parent

This decision was entered as the Commission's Final Decision on April 13, 1970. Subsequently, the Commission found in a related case involving a stock interest in the same Cuban entity that the entity had a greater value than determine in this case. Accordingly, the Commission reopened this claim on its own motion, and increased claimant's Certification of Loss accordingly. The Amended Final Decision is included herein.

has certified that at all pertinent times more than 50% of the parent's outstanding capital stock was owned by nationals of the United States; and that as of April 15, 1960, 57,376 shares out of the parent's outstanding capital stock of more than 6,000,000 were owned by nonrationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

STOCK INTEREST

The record establishes and the Commission finds that claimant owned 47,167 shares of common stock out of 100,000 shares, and 8,018.33 shares of preferred stock out of 17,000 shares, constituting a 47.167% stock interest in IHC of Cuba. The record further shows that by Resolution No. 4231, issued on June 10, 1960, IHC of Cuba was declared intervened by the Cuban Minister of Labor pursuant to Law 647 of November 24, 1959. The Commission finds that IHC of Cuba was intervened by the Government of Cuba on June 10, 1960.

Since IHC of Cuba was organized under the laws of Cuba, it does not qualify as a "national of the United States" within the meaning of Section 502(1)(B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The sole business of IHC of Cuba was the operation of the Hotel Nacional. IHC of Cuba commenced operations in Cuba on August 1, 1955 when it acquired by purchase from National Cuba Hotel Corporation an assignment of a lease of the National Hotel of Cuba, Havana, which had over 500 rooms. On the same date, IHC of Cuba also acquired by purchase title to all of the personal property constituting the contents of the hotel, including the furniture, fixtures, equipment, linens, drapes, cutlery, china, silverware, generator, air-conditioning appliances, food, supplies, etc. Pursuant to the express terms of the lease, IHC of Cuba acquired the right to operate the entire hotel and all its facilities, rent free, for a period ending November 21, 1989. Thus, on the date of loss, June 10, 1960, the lease had almost 29½ years to run. A copy of the original lease, dated August 16, 1929, and copies of the assignments thereof as well as of sales documents of the various items of personal property situated on the premises of the hotel are included in the record.

Extracts from the books and records of IHC of Cuba disclose that it paid \$3,600,000.00 for the hotel lease and the contents of the hotel, the Cuban peso being on a par with the United States dollar. In addition IHC, of

Cuba made substantial improvements to the premises, nearly all of which were completed between 1958 and 1960 as follows:

Building improvements	\$294,217.00
Furniture and fixtures	585,022.00
Air-Conditioning	485,975.00
Decoration	28,930.00
Miscellaneous improvements	60,683.00
	<hr/>
Total	\$1,454,827.00

Accordingly, the total investment made by IHC of Cuba was \$5,054,827.00. IHC of Cuba enhanced its business operations by subleasing a part of the hotel premises for gambling and entertainment. Not only did the sublessee physically improve the sublet premises, but the casino and night club brought increased trade to IHC of Cuba and augmented the earnings of IHC of Cuba by its annual rent of \$300,000.00.

The evidence establishes that the operations of IHC of Cuba were very profitable. Copies of profit and loss statements, included in the record, show that during the first two full years, 1956 and 1957, IHC of Cuba earned net incomes of \$780,209.64 and \$880,468.82, respectively. The net worth of IHC of Cuba as shown by balance sheets, rose from \$2,601,017.25 in 1956 to \$3,157,636.08 in 1957.

In 1958 Castro's revolutionary activities spread to Northern Cuba including the City of Havana. As a result, the business of IHC of Cuba declined sharply. IHC of Cuba showed net losses of \$456,488.26 in 1958, \$825,367.78 in 1959, and \$390,527.00 for the four-months period of January through April 1960.

In view of the foregoing, claimant urges that the value of its stock interest in IHC of Cuba be determined as follows: Compute the going concern value of IHC of Cuba by multiplying its average annual earnings by 8 using the two normal years, 1956 and 1957.

Claimant's computation results in a going concern value of \$6,850,000.00, which equals \$3,230,939.50 for claimant's 47.167% stock interest.

Upon consideration of the entire record, the Commission concludes that the circumstances herein render it inequitable to determine the value of IHC of Cuba on the basis of its book value, shown in its balance sheets. The Commission finds that the valuation most appropriate to the property and equitable to the claimant is the amount resulting from capitalizing the average annual net earnings of IHC of Cuba at 10%. (See *Claim of Julius J. Shepard*, Claim No. CU-0407, Amended Proposed Decision.)

As noted above, Castro's revolutionary activities in 1958 caused a sharp decline in the business operations of IHC of Cuba. After Castro assumed power on January 1, 1959, his regime commenced an extensive program of nationalization, expropriation, confiscation and intervention of property in Cuba. As a result of Castro's actions, IHC of Cuba experienced substantial losses in 1959 and thereafter. What had been a very profitable operation prior to Castro's activities became a business in which losses mounted progressively.

In view of these circumstances, it would be inequitable to compute the average annual net earnings of IHC of Cuba by including the entire period of its operations. On the other hand the elimination of all periods of time subsequent to 1957 merely because they were unprofitable would hardly consti-

tute a sound basis for determining the value of IHC of Cuba under Title V of the Act.

The Commission finds that the fair and reasonable value of IHC of Cuba as a going concern should be based upon the capitalization of its average annual net earnings for the three-year period, 1956 through 1958. The record shows that IHC of Cuba earned net profits of \$780,209.64 and \$880,468.-82 in 1956 and 1957, respectively, and suffered a loss of \$456,488.26 in 1958. Therefore, its total earnings for that period were \$1,204,190.20, and its average annual net earnings were \$401,396.73. Accordingly, the Commission finds that the value of IHC of Cuba as a going concern on June 10, 1960, the date of loss, was \$4,013,967.30.

The facts in this case present a further element that warrants consideration. As indicated above, the record shows that IHC of Cuba had expended \$1,454,827.00 in improving the hotel premises, practically all of which had occurred shortly before intervention. Under the circumstances in this case, IHC of Cuba was unable to recoup any benefit from that recent investment. The Commission therefore finds it appropriate in this instance and equitable to the claimant to include that investment in determining the overall value of IHC of Cuba on the date of loss. Accordingly, the Commission finds that the overall value of IHC of Cuba on June 10, 1960, the date of loss, was \$5,468,794.30. Therefore, claimant's 47.167-t-t stock interest in IHC of Cuba had a value of \$2,579,466.21.

MANAGEMENT COMPENSATION

Claimant asserts a further loss of \$3,138,192.00, representing the amount attributable to deprivation of its "management compensation." It is stated that claimant had entered into an agreement with IHC of Cuba pursuant to which claimant was to receive an annual fixed fee of \$25,000.00 plus 25c' of the net operating income of the hotel, after certain deductions, in consideration of management and operating services to be performed by claimant. This agreement was terminated on January 15, 1960 due to losses sustained by IHC of Cuba in 1958 and 1959. Claimant has computed its average annual income for such services, using 1956 and 1957, and has capitalized that amount at 12.5'/c to arrive at an asserted loss of \$3,138,192.00.

The Commission finds no valid basis for allowing this portion of the claim under Title V of the Act. Clearly this portion of the claim is based upon projected future earnings of the hotel, and the record shows that there were no such earnings after 1957. Moreover, the asserted contract was terminated prior to the intervention of IHC of Cuba. The Commission finds that any loss which claimant may have sustained in this respect is not one of the types covered by Title V of the Act. (See *Claim of Robert L. Cheaney and Marjorie L. Cheaney*, Claim No. CU-0915; *Claim of Ford Motor Company*, Claim No. CU-3072.) Accordingly, this portion of the claim is denied.

DEBT

The balance sheet for IHC of Cuba as of April 30, 1960 shows that it owed claimant a debt of \$39,410.01. Extracts from claimant's records, however, disclose that as a result of subsequent adjustments, the amount due claimant from IHC of Cuba was \$35,239.00. The Commission, therefore, finds that claimant also sustained a loss of a debt due from an intervened Cuban entity in the amount of \$35,239.00. (See *Claim of Kramer, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. [July-Dec. 1966].)

CONTINGENT CLAIM

Claimant has also asserted a contingent or "protective" claim in the amount of \$2,000,000.00 plus accrued interest. The record shows that IHC of Cuba borrowed \$2,000,000.00 on December 20, 1957 from Banco de Fomento Agrícola a Industrial de Cuba, an instrumentality of the Government of Cuba. The loan was secured by a mortgage on the hotel premises, and was evidenced by 200 mortgage bonds, each in the amount of \$10,000.00, payable annually over a period of 15 years. It further appears that claimant made an agreement with the mortgagee bank on December 20, 1957, pursuant to which claimant agreed to purchase the mortgage bonds in the event of a default under the mortgage indenture. Subsequently, IHC of Cuba entered into agreements by which the time for paying the initial two installments was extended to December 20, 1973 and December 20, 1974, respectively.

It is undisputed that claimant has, as yet, sustained no loss in this respect. Clearly, its contingent claim is intended to guard against any loss in the future should a claim be made against claimant and prove to be successful. The Commission notes that Title V of the Act provides for certain claims against Cuba which "have arisen since January 1, 1959". The statute does not provide for the determination of contingent losses or losses which were not sustained by claimant. (See *Claim of Ford Motor Company*, Claim No. CU-3072.) Moreover, it would appear that any claim by the mortgagee bank or Cuba pursuant to the contract with claimant would not be successful in view of the fact that any default under the mortgage indenture would necessarily be attributable to action by Cuba, and additionally because the security for the loan was taken by Cuba. For the foregoing reasons, the contingent or "protective" claim is denied.

Accordingly, claimant sustained the following losses within the meaning of Title V of the Act:

<i>ITEM OF PROPERTY</i>	<i>DATE OF LOSS</i>	<i>AMOUNT</i>
Stock interest in IHC of Cuba	June 10, 1960	\$2,579,466.21
Debt due from IHC of Cuba	June 10, 1960	35,239.00
	Total	<u>\$2,614,705.21</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisie Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that INTERCONTINENTAL HOTELS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Six Hundred Fourteen Thousand Seven Hundred Five Dollars and Twenty-One Cents (\$2,614,705.21) with interest thereon at 6% per annum from June 10, 1960 to the date of settlement.

Dated at Washington, D.C., March 4, 1970.

AMENDED FINAL DECISION

Under date of April 13, 1970, the Commission entered its Final Decision on this claim without objections from claimant, certifying a loss in favor of claimant in the amount of \$2,614,705.21 plus interest. That certification represented the loss of a 47.167% stock interest in a Cuban corporation, Intercontinental Hotels Corporation of Cuba, S.A. (IHC of Cuba) in the amount of \$2,579,466.21 and a debt due from IHC of Cuba in the amount of \$35,239.00.

In the *Claim of American Securities Corporation*, Claim No. CU-3335, objections were filed with respect to the Commission's valuation of that claimant's 1/3 stock interest in IHC of Cuba. Upon consideration of those objections in the light of the entire record, the Commission found that the total value of all of the outstanding capital stock of IHC of Cuba on June 10, 1960, the date of loss, was \$9,758,219.30, and the value of that claimant's stock interest was increased accordingly.

The Commission, therefore, has reopened this claim on its own motion, and now finds that the value of this claimant's 47.167% stock interest in IHC of Cuba on June 10, 1960 was \$4,602,659.30.

Accordingly, the Certification of Loss in the Final Decision of April 13, 1970 is set aside and the following Certification of Loss will be entered, and the Final Decision is affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that INTERCONTINENTAL HOTELS CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Million Six Hundred Thirty-Seven Thousand Eight Hundred Ninety-Eight Dollars and Thirty Cents (\$4,637,898.30) with interest thereon at 6% per annum from June 10, 1960 to the date of settlement.

Dated at Washington, D.C., April 14, 1971.

IN THE MATTER OF THE CLAIM OF COLGATE-PALMOLIVE COMPANY

Claim No. CU-0730—Decision No. CU-4547

Where warranted, the going concern value of a Cuban enterprise may be determined by applying a multiple of 15 to the enterprise's average annual net earnings.

FINAL DECISION

Under date of March 4, 1970, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$5,427,581.84 plus interest. The certification of loss represented losses sustained by claimant in connection with its interest in

Crusellas y Cia., S.A. (Crusellas).....	\$3,529,603.62
Detergentes Cubanos, S.A. (Detergentes).....	1,781,572.82
Debt owed by Detergentes.....	116,405.40
	<hr/>
Total	\$5,427,581.84

Claimant's objections were based on two grounds; namely: (1) that the evidence established that claimant owned 35,858 shares of stock in Crusellas and 94,636 shares of stock in Detergentes; and (2) that the Commission erred in evaluating said stock interests by capitalizing the average annual net earnings of the two Cuban corporations for the years 1957 through 1959 at 10%, and should have given more weight to an opinion from Dillon, Reed & Company that the aggregate value of both corporations was \$40,000,000.00.

At the oral hearing held on January 12, 1971, testimony was presented by Mr. James Henry Carpenter, an officer of claimant, by Mr. Mortimer Collins who had prepared the opinion for Dillon, Reed & Company; and by Mr. Norman M. Mintz, an economist; and counsel argued on behalf of claimant.

Mr. Carpenter testified that claimant had commenced a vigorous sales campaign in Cuba in 1953, promoting its detergents which were sold to the Cuban public through the two Cuban corporations. He had remained in Cuba until 1957, at which time the results of these efforts were being evidenced by increased earnings of the two corporations.

Mr. Collins testified that his study of the operations of a number of American concerns as compared with claimant's operations led him to the conclusion that the aggregate value of the two corporations should be determined by applying a multiple within the range between 18 and 43 to the average net earnings of the two corporations for the year 1959.

Mr. Mintz testified that he had made an independent study of a number of American concerns, including claimant, which led him to conclude that the two Cuban corporations were showing a high growth potential as shown by progressively increasing earnings, thereby justifying a valuation of 20 times the net earnings for 1959. His testimony was supported by his written opinion introduced in evidence at the oral hearing.

Counsel for claimant urged an increase in the multiple used by the Commission in its Proposed Decision and a resultant increase in the Certification of Loss based on the established extent of claimant's stock interests in the two Cuban corporations.

Upon consideration of the oral testimony and the evidence and arguments presented at the hearing in the light of the entire record, the Commission now finds that claimant owned 35,858 shares of stock in Crusellas and 94,636 shares of stock in Detergentes on October 13, 1960, when both corporations were nationalized by the Government of Cuba.

The evidence shows that the two corporations each had a good growth potential on the date of loss judging from the steady rise in net earnings in the years immediately prior to 1960. Accordingly, it is concluded that the application of a higher multiple than was employed in the Proposed Decision is warranted.

It would appear from the evidence presented that the growth potential of the two corporations would normalley levehe off at or about the rate prevailing in 1959. The Commission therefore finds that the net earnings of the two corporations for 1959 represent, in effect, their average annual net earnings.

Considering the entire record, the Commission finds that the valuations most appropriate in this case and equitable to the claimant are the results obtained from applying a multiple of 15 to the net earnings of the two corporations for 1959 to arrive at the going concern values of the corporations.

Since the record shows that the net earnings of Crusellas and Detergentes in 1959 were \$1,105,002.36 and \$257,871.36, respectively, the Commission finds that their going concern values were \$16,575,035.40 and \$3,868,070.40.

Considering the fact that the excess of cash plus current accounts receivable over current accounts payable of the two corporations were \$4,475,773.77 for Crusellas and \$270,625.73 for Detergentes, the Commission finds that the overall values of the two corporations were \$21,050,809.17 and \$4,138,696.13, respectively.

Inasmuch as Crusellas and Detergentes had 63,023 and 162,228 shares of outstanding capital stock, respectively, on the date of loss, the Commission finds that the values of each share of such stock were \$334.0179 and \$25.5116, respectively. Therefore, the values of claimant's stock interests were \$11,977,213.86 and \$2,414,315.78, respectively.

The finding in the Proposed Decision as to the debt of \$116,405.40 owed claimant by Detergentes is affirmed.

Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that COLGATE-PALMOLIVE COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Million Five Hundred Seven Thousand Nine Hundred Thirty-Five Dollars and Four Cents (\$14,507,935.04) with interest at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D.C., February 3, 1971.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$29,293,109.78, was presented by the COLGATE PALMOLIVE COMPANY, based upon the asserted loss of its stockholder interest in the Cuban companies Crusellas y Cia., S.A., and Detergentes Cubanos, S.A. because of the nationalization of these companies by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation of entity.

The record shows that claimant was organized under the laws of the State of Delaware. Further, the record discloses that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant stated that on January 24, 1966 there were outstanding 15,218,588 shares of claimant's stock, 1.4% of which were registered in the names of stockholders who are presumed to be nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that claimant herein owned a 100% interest in Norwood International, Inc., which in turn owned 16,355 shares of Crusellas y Cia., S.A. stock, and 114,139 shares of Detergentes Cubanos, S.A. stock, both latter corporations organized under the laws of Cuba. The evidence of record further shows and the Commission finds that Crusellas y Cia., S.A., and Detergentes Cubanos, S.A., were nationalized by the Government of Cuba on October 13, 1960, by virtue of Law No. 890, published in the Cuban Official Gazette on that date. Since the Cuban firms were organized under the laws of Cuba, they do not qualify as corporate "nationals of the United States" within the meaning of Section 502(1)(B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The claimant has submitted balance sheets, profit and loss statements for the years 1955-1959, and other information pertaining to the value of the two Cuban corporations in question. In addition, the Commission has taken into consideration the August 31, 1960, balance sheets of the two Cuban corporations submitted by Frank J. Carbon, Executive Vice President of Crusellas y Cia., S.A. at the time of its nationalization, in connection with his claim (Claim No. CU-0172) which, in part, is based upon stockholder interests in the two Cuban corporations now in question. These two balance sheets are included in the record by reference.

CRUSELLAS Y CIA., S.A.

The balance sheet of August 31, 1960, for Crusellas y Cia., S.A., reflects the following in Cuban pesos, which were on a par with the United States dollar:

<i>Assets</i>	
<i>Current Assets</i>	
Cash.....	\$ 2,343,183.29
Accounts Receivable (less Reserve \$549,141.00).....	2,561,482.79
Inventories.....	3,277,426.11
Total Current Assets.....	8,182,092.19
Prepaid Expenses.....	148,584.08
Miscellaneous Investments (less Reserve - \$37,597.00)	2,003.00
Property, Plant & Equipment	
Gross.....	\$4,387,541.00
Less Reserve.....	2,444,552.00
	1,942,989.00
Goodwill.....	1,260,000.00
Inter-Company Accounts—Net	396,010.73
Total Assets.....	\$11,931,679.00
<i>Liabilities & Capital</i>	
<i>Current Liabilities</i>	
Accounts Payable.....	\$ 428,892.31
Misc. Accruals & Reserves	966,033.78
Total Current Liabilities	\$ 1,394,926.09
Deferred Liabilities & Reserves.....	145,388.84
	1,540,314.93
<i>Capital Stock & Surplus</i>	
Capital Stock (63,023 shares at \$100.00)	\$6,302,300.00
Surplus.....	3,931,727.90
	10,234,027.90
Inter-Company Account	
Detergentes Cubanos, S.A.....	157,336.17
Total Liabilities & Capital.....	\$11,931,679.00

Additional evidence, submitted by claimant, shows and the Commission finds that the asset "Goodwill" was purchased by Crusellas y Cia., S.A., in the amount stated in the balance sheet above.

The claimant argues that Crusellas y Cia., S.A. had a going concern value in the amount of 40 times the company's earnings in 1959 after Cuban taxes, or \$41,560,000.00.

In support of its argument, claimant submitted an opinion dated October 7, 1968, by Dillon, Reed & Co., Inc., in which Crusellas y Cia., S.A. is valued at \$40,000,000.00 on the basis of its asserted going concern value.

The record shows that Crusellas y Cia., S.A. had annual earnings after

Cuban taxes in the amounts of 737,500.00, 895,100.00 and 1,105,002.36 pesos for the years ending December 31, 1957, through December 31, 1959, amounting to an annual average of 912,534.12 pesos. Thus the company's profits had been increasing progressively, indicating that the value of the business in Cuba had risen. However, the Commission does not share the view that a prudent buyer would have paid \$40,000,000.00 for Crusehelas y Cia., S.A. in 1960, when the previous years' profits indicated a return of \$1,105,002.36 only. In the Commission's opinion the going concern value of Crusellas y Cia., S.A. in 1960 may be arrived at by capitalizing the average net earnings after Cuban taxes at 10%, instead of 2.25% as suggested by cheaimant. Inasmuch as the average annual earnings of Crusellas y Cia., S.A. was 912,534.12 pesos, its going concern value would be 10 times that amount, or 9,125,341.20 pesos.

It is noted that Crusellas y Cia., S.A., owned cash and accounts receivable in the amounts of \$2,343,183.29 and \$2,561,482.79, respectively. Cash and accounts receivable are corporate assets which increase the shareholder's equity but are not the type of assets which create the going concern value or, for such a reason, would be sold to and paid for by a purchaser of the enterprise. Accordingly, the assets of cash and accounts receivable, diminished by the accounts payable, should be added to the going concern value in order to arrive at the amount of loss which the stockholders of Crusellas y Cia., S.A. sustained by the nationalization of the corporation by the Government of Cuba.

The balance sheet of August 31, 1960, includes in its assets an item entitled "Inter-Company Accounts—Net" in the amount of 396,010.73 pesos. A comparison with previous balance sheets shows and the Commission finds that the 396,010.73 pesos in question were due from the parent COLGATE-PALMOLIVE COMPANY, the claimant herein. Inasmuch as it is obvious that no amount due from the claimant corporation was taken by the Government of Cuba in connection with the nationalization of Crusellas y Cia., S.A., this sum should be disregarded in arriving at the amount of loss.

Accordingly, the loss may be calculated as follows:

Going concern value.....	9,125,341.20 pesos
Cash.....	2,343,183.29 pesos
Accounts receivable.....	2,561,482.79
	4,904,666.08
Less : Accounts Payable.....	428,892.31 4,475,773.77
	<hr/>
	13,601,114.97 pesos

Inasmuch as Crusellas y Cia., S.A. had 63,023 shares of its stock outstanding on the date of its nationalization, a date when the Cuban peso was on par with the United States dollar, the Commission finds that the amount of loss sustained with respect to the ownership of one share of Crusellas y Cia., S.A. stock amounted to \$215.8119. Accordingly, the Commission holds that claimant's 16,355 shares of Crusellas y Cia., S.A., had a value of \$3,529,603.62 at the time of loss.

In view of the foregoing, the Commission concludes that claimant sustained a loss within the purview of Title V of the Act in connection with its shares of stock in Crusellas y Cia., S.A., in the amount of \$3,529,603.62.

FOREIGN CLAIMS SETTLEMENT COMMISSION

DETERGENTES CUBANOS, S.A.

The balance sheet of August 31, 1960, reflects the following in Cuban pesos, which were on a par with the United States dollar:

Assets	
<i>Current Assets</i>	
Cash.....	\$ 270,469.78
Accounts Receivable.....	19,014.09
Inventories.....	378,403.49
Total Current Assets	\$ 667,887.36
Prepaid Expenses.....	99,945.00
Miscellaneous Investments.....	\$ 5,400.00
Less Reserve.....	5,399.00 1.00
Property, Plant & Equipment	
Gross.....	\$2,094,893.40
Less Reserve.....	1,295,876.56 799,016.84
Inter-Company Account	
Crusellas y Cia., S.A.....	157,336.17
Total Assets	\$1,724,186.37
<i>Liabilities & Capital</i>	
<i>Current Liabilities</i>	
Accounts Payable.....	\$ 176,194.31
Miscellaneous Accruals & Reserves.....	145,409.93
Total Current Liabilities	\$ 321,604.24
Deferred Liabilities & Reserves.....	28,588.27
	350,192.51
<i>Capital Stock & Surplus</i>	
Capital Stock (162,228 shares at \$5.00)	811,140.00
Surplus.....	446,448.46 1,257,588.46
	116,405.40
Inter-Company Accounts.....	\$1,724,186.37
Total Liabilities & Capital	\$1,724,186.37

The record shows that Detergentes Cubanos, S.A., had annual earnings after Cuban taxes in the amounts of 193,785.27, 226,813.95 and 257,871.36 pesos for the years ending December 31, 1957, through December 31, 1959, amounting to an annual average of 226,156.86 pesos. The steadily increasing profits show that it was a growth operation.

The Commission has considered the contents of the document entitled "Cuban Plant Evaluation" prepared by the claimant's Central Engineering Department on March 7, 1963. In this appraisal the values of the real property, plant, and equipment, owned by the two corporations in question and taken by the Government of Cuba, is calculated on the basis of the estimated cost of replacement as reduced by depreciation. The properties of the two companies have not been separated in this annual report.

erty, plant, and equipment of the two corporations is estimated at \$11,717,493.00, about 80.7% more than the original cost of \$6,482,434.40, as shown by the balance sheets above. Even the depreciated value of \$8,382,170.00 is about 29.3% more than the original cost. The Commission is not convinced that use of the appraisal values is appropriate and finds that the value of the property taken by the Government of Cuba may be more correctly and equitably computed by the method stated above than by relying upon the valuation indicated in the document entitled "Cuban Plant Evaluation".

Accordingly, the Commission finds that Detergentes Cubanos, S.A., had a going concern value amounting to 10 times its annual average earnings of 226,156,156.86 pesos or 2,261,568.60. Adding to that amount the cash and accounts receivable, and diminishing it by the accounts payable, the amount of loss sustained by the stockholders of Detergentes Cubanos, S.A., may be calculated as follows:

Going concern value		2,261,568.60 pesos
Cash	270,469.78	
Accounts receivable	19,014.09	
Inter-Company account		
Crusellas y Cia., S.A.	157,336.17	
	<u>446,820.04</u>	
Less: Accounts payable	176,194.31	270,625.73
		<u>2,532,194.33 pesos</u>

Inasmuch as Detergentes Cubanos, S.A., had 162,228 shares of stock outstanding on the date of its nationalization, a date when the Cuban peso was on par with the United States dollar, the Commission finds that the amount of loss sustained with respect to the ownership of one share of Detergentes Cubanos, S.A., stock amounted to \$15.6088.

Accordingly, the value of claimant's 114,139 shares of Detergentes Cubanos, S.A. stock amounted to \$1,781,572.82.

It is noted by the Commission that one of the liabilities, identified as "Inter-Company Accounts" in the sum of 116,405.40 pesos was an amount due to the parent COLGATE-PALMOLIVE COMPANY, the claimant herein. Since Section 502(3) defines "property", among other things, as "debts owed by the Government of Cuba or enterprises which have been nationalized, . . . by the Government of Cuba", the Commission finds that claimant is entitled to a certification of loss on such account in the sum of \$116,405.40.

SUMMARY

16,355 Shares of Crusellas y Cia., S.A.		
stock at \$215.8119 per share		\$3,529,603.62
114,139 shares of Detergentes Cubanos, S.A.		
stock at \$15.6088 per share		1,781,572.82
Debt owed by Detergentes Cubanos, S.A.		116,405.40
		<u>\$5,427,581.84</u>

The Commission concludes that the aggregate amount of claimant's losses,

sustained within the purview of Title V of the Act, amounted to \$5,427,581.84.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that COLGATE-PALMOLIVE COMPANY sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Million Four Hundred Twenty-seven Thousand Five Hundred Eighty-one Dollars and Eighty-four Cents (\$5,427,581.84) with interest thereon at 6% per annum from October 13, 1960, to the date of settlement.

Dated at Washington, D.C., March 4, 1970.

IN **THE** MATTER OF THE CLAIM OF UNION LIGHT AND POWER COMPANY OF CUBA

Claim No. CU-0330—Decision No. CU-0286

Items, such as intangibles, franchises, and licenses, may 'not be allowed as assets unless the evidence establishes the nature thereof and the fact that these items had values on the date of loss.

AMENDED PROPOSED DECISION *

Under date of September 20, 1967, the Commission issued a Proposed Decision denying this claim on the ground that claimant had failed to sustain the burden of proof. Subsequently, claimant submitted a substantial amount of supporting evidence.

Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNION LIGHT AND POWER COMPANY OF CUBA, in the amount of \$1,500,000.00, based upon the asserted loss of certain personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. »1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

* This decision was entered as the Commission's Final Decision on March 19, 1969.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of the State of Delaware. It appears that claimant had borrowed large sums of money in 1929 and had used all of its outstanding stock as collateral. Upon default and foreclosure, the creditor, also a Delaware corporation, acquired title to said stock. In turn, this creditor corporation had pledged the stock of claimant as collateral for its own promissory notes to a certain group of noteholders, referred to as the Committee. In 1933, this Committee acquired title to all of claimant's stock upon default with respect to the said notes, and entries were made in the stock transfer records of claimant to show such ownership by the Committee. The former noteholders who were members of the Committee thus acquired stock interests in claimant in direct proportion to the percentages their creditor interests bore to the total indebtedness of claimant, the principal amount of which was \$1,355,000.00 in 1933.

The largest single member of the Committee, the Continental Illinois National Bank and Trust Company of Chicago, owning in excess of 70% of claimant's stock, has certified, through one of its officers, that it was organized under the laws of the United States and that over 75% of its outstanding capital stock was owned by nationals of the United States. Other evidence of record establishes that all of the members of the Committee have been nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The evidence of record indicates that claimant operated an electric utility company, not organized as a legal entity, which furnished electric power in Oriente Province, Cuba. In connection with these operations, claimant owned electric generating plants, power transmission lines, meters, materials and supplies, and other necessary equipment, as well as bank accounts, and accounts receivable from Cuban customers and the Government of Cuba who used claimant's electricity.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the UNION LIGHT AND POWER COMPANY OF CUBA. The Commission finds that all of claimant's properties in Cuba were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights,

or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant asserts that its assets in Cuba had an aggregate value of \$1,500,000.00, and submits the following in support of its assertion:

1. Certain written reports in 1954 and 1956 to the effect that offers had been made to purchase claimant's assets in Cuba for approximately \$500,000.00;

2. A written report in January 1960 that claimant's representative in Cuba had offered to sell claimant's assets for approximately \$1,000,000.00;

3. An affidavit, dated March 4, 1968, from claimant's former general manager of its business in Cuba, stating that in September 1960, when the nationalization of claimant was being proposed by Cuba, a Cuban Government official offered to compensate claimant for its properties in Cuba in the amount of \$1,010,000.00 in the form of 4% per cent bonds.

The record, however, contains no written offer of a definite amount from any prospective purchaser, and it appears that in 1954 the Committee passed a resolution authorizing the sale of the assets for \$500,000.00 "or better".

Included in the record are interim statements of income and balance sheet figures for each of the months from July 1959 through February 1960; audited balance sheets for the periods ending June 30, 1957, June 30, 1958, and June 30, 1959, as well as related profit and loss statements. A balance sheet as of February 29, 1960, prepared from these interim figures discloses the value of claimant's assets as follows, which has been certified by an officer of claimant as fairly representing claimant's financial condition at that time:

Cash.....	\$	41,431.97	
Less amount maintained in a bank in the United States.....		300.43	
Net cash in Cuba.....	\$	41,131.54	
Accounts receivable (from Cuban nationals)		75,504.90	
Materials and supplies.....		20,965.73	
Debts owed by Cuban Government and Municipalities for electricity supplied.....		78,603.25	
Deferred Charges.....		25,321.74	
Other assets.....		69,126.19	
Investments.....		1.00	
Properties, plants and equipment.....	\$1,050,081.55		
Less reserve for depreciation.....	529,609.59		
Net properties, plants and equipment.....		520,471.96	
Total Assets.....		\$831,126.31	

In an affidavit, dated January 16, 1969, an officer of claimant has stated that the amount claimed includes all "intangibles," and that the assets shown in the interim balance sheet of February 29, 1960 did not include any amounts for "franchises and licenses." The record, however, contains nothing that would either indicate the nature of these intangibles, franchises and licenses, or establish their value on the date of loss. Moreover, no such items are included in the audited balance sheets of June 30, 1957, June 30, 1958, or June 30, 1959.

Said three balance sheets were accompanied by explanatory statements, one of which was repeated on each occasion. The auditors stated that they were unable to express an opinion concerning the values appearing in the three balance sheets for the properties, plants and equipment inasmuch as no depreciation had been taken for the transmission lines and certain fully-depreciated items were included. Claimant's explanation with respect to the transmission lines was that depreciation for such property was not allowed as a deductible expense for Cuban income tax purposes, which fact was corroborated by the auditors. It does not appear that the financial picture of claimant as of February 29, 1960 is distorted by the inclusion of fully-depreciated items because such depreciation apparently was part of the reserve for depreciation, which reduced these assets by more than 50% (as of February 29, 1960).

Having fully considered all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that reflected in the interim balance sheet as of February 29, 1960. Although that financial statement was not audited, it appears upon comparison with the three audited balance sheets, and particularly the latest one as of June 30, 1959, that the values set forth in the balance sheet as of February 29, 1960 fairly represent the financial condition of claimant, as stated by an officer of claimant. With respect to claimant's transmission lines located in Cuba, the Commission finds no valid basis for reducing the value thereof on account of depreciation because the laws of Cuba prohibited depreciation of such property for income tax purposes. Inasmuch as the Commission's statutory duty is to determine, *inter alia*, the value of property in Cuba on the date of loss, the Commission holds that any reduction for depreciation of claimant's transmission lines under the circumstances would not be appropriate to the property or equitable to the claimant. Accordingly, no reduction in the value of said property on account of depreciation is made.

There being no evidence to establish the nature of the intangibles, franchises and licenses, or to establish their value on the date of loss, that portion of the claim is denied.

The Commission finds that the aggregate value of claimant's assets in Cuba on October 24, 1960, the date of loss, was \$831,126.31. It appears from the balance sheet of February 29, 1960 that claimant was indebted to Cuba for taxes in the amount of \$10,155.82. The Commission has held that in a claim against Cuba under Title V of the Act, an amount due the Republic of Cuba for taxes should be applied in reducing the amount of loss sustained, on the theory of set-off. (See *Claim of Simmons Company*, Claim No. CU-2303.)

Accordingly, the Commission finds that the net loss sustained by claimant within the meaning of Title V of the Act was the amount of \$820,970.49.

The Commission has decided that in certification of losses on claims

pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (*see Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that UNION LIGHT AND POWER COMPANY OF CUBA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Hundred Twenty Thousand Nine Hundred Seventy Dollars and Forty-nine Cents (\$820,970.49), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D.C., February 19, 1969.

IN THE MATTER OF THE CLAIM OF PAN-AMERICAN LIFE INSURANCE COMPANY

Claim No. CU-3651—Decision No. CU-4212

On the basis of competent evidence, the value of an insurance company's issued policies may be determined by finding its gross equity therein and reducing it by appropriate discount rates.

FINAL DECISION

Under date of November 26, 1969, the Commission issued its Proposed Decision on this claim, certifying a loss in the amount of \$7,821,638.51 plus interest in favor of claimant, and denying portions of the claim based on bonds of the Cuban Telephone Company, on debts due from claimant's insureds secured by the cash surrender of their policies, and on good will or going concern value. Subsequently, claimant objected, submitted new evidence and requested an oral hearing which was held on June 9, 1971.

At the hearing an actuary, A. Anthony Autin, Jr., testified on behalf of claimant, and counsel presented oral argument.

Upon consideration of the new evidence, including the testimony and arguments offered at the oral hearing, in light of the entire record, the Commission finds as follows:

1. Bank Accounts

The Commission finds that on October 24, 1960, the date of loss, claimant owned bank accounts in Cuba having an aggregate value of \$406,551.98, rather than \$107,248.80 as set out in the Proposed Decision.

2. Cuban Telephone Company Bonds

The Commission finds that claimant owned bonds of the Cuban Telephone Company in the fact amount of \$500,000.00.

The Commission has held that a claim based upon debts of the Cuban Telephone Company is within the purview of Title V of the Act because, although the Cuban Telephone Company was a national of the United States at all pertinent times, it is now defunct. In the *Claim of International Telephone and Telegraph Company*, (Claim No. CU-2615), the Commission found that the assets of the Cuban Telephone Company had been taken by the Government of Cuba on August 6, 1960. Accordingly, the Commission finds that on August 6, 1960, claimant sustained a loss in the amount of \$500,000.00.

The Commission finds that on October 24, 1960, the date of loss, claimant was indebted to Cuba in the amount of \$6,059.55, which must be deducted in determining claimant's losses under Title V of the Act, rather than \$16,850.34, as set out in the Proposed Decision.

4. *Goodwill or Going Concern Value*

The record shows that over the years claimant had built up a viable organization in Cuba through which claimant conducted its insurance business in that country. Claimant had expended time, effort and funds in creating an organization which was producing profits on the date of loss and which would continue to do so in the future.

The Commission therefore finds that on the date of loss claimant owned two assets that were not shown on its books and records. One such asset is claimant's equity in the insurance contracts it had issued; the other such asset is not goodwill or going concern value, but rather, is the value of its business organization in Cuba, its "going business" value.

Equity in Insurance Contracts

Claimant has submitted a detailed memorandum and supporting schedules prepared following a thorough analysis of its Cuban operations. Employing projections beginning January 1, 1960, the analysis projects profits for the years 1960 through 1975 based on claimant's issued insurance contracts. The resulting amounts each year are then discounted at the rate of 4 per annum to arrive at the values on October 24, 1960, the date of loss, which aggregate \$1,498,847.00. These are in effect, reserves.

Upon consideration of the entire record, the Commission finds that claimant's projections are fair and reasonable, except as to the year 1960, for which the Commission cannot agree as to the asserted discount rate. Inasmuch as the date of loss was October 24, 1960, the Commission finds no valid basis for including 1960 in this computation. With respect to the discount rate, the Commission has held in other claims against Cuba in which projected amounts for future years were concerned that a 12% per annum discount rate is appropriate. (See *Claims of Moa Bay Mining Company, et al.*, Claim Nos. CU—2619 and CU—2573.) The Commission finds that a discount rate of 12% per annum should be applied in this case. The Commission therefore finds that claimant's equity in the insurance contracts had the following aggregate value on October 24, 1960:

<i>Year</i>	<i>Gross Equity</i>	<i>Net Equity</i>
1961	\$ 211,075.00	\$188,459.79
1962	189,697.00	151,225.31
1963	170,971.00	121,693.74
1964	153,874.00	97,789.70
1965	138,486.00	78,580.70
1966	124,638.00	63,145.47
1967	112,174.00	50,741.80
1968	100,956.00	40,774.41
1969	90,861.00	32,765.39
1970	81,775.00	26,329.34
1971	73,597.00	21,157.37
1972	66,238.00	17,001.64
1973	59,614.00	13,661.98
1974	53,652.00	10,978.27
1975	48,287.00	8,821.84

Accordingly, the Commission finds that the aggregate value of claimant's contracts on October 24, 1960 was \$923,126.75.

Going Business Value

Considering the fact that claimant had 30 trained agents in Cuba operating through a well-developed business organization, the Commission finds that claimant's valuation of its "going business" value is fair and reasonable, particularly since the record shows that its investment in each of the agents was \$10,875.00. The Commission therefore finds that claimant's organization in Cuba had a "going business" value of \$187,941.00 on October 24, 1960.

Claimant's losses are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
4 $\frac{1}{2}$ % Bonds, 1937-1977	October 24, 1960	14,200.34
4% Bonds, 1953-1983	October 24, 1960	\$1,457,000.00
4% ^c Bonds, 1950-1980	October 24, 1960	182,280.00
2 $\frac{1}{2}$ % U.S. Treasury Bonds	October 24, 1960	7,135.00
Cuban Telephone Company Bonds	August 6, 1960	500,000.00
Cuban Electric Company		
Mortgage Bonds	August 6, 1960	508,472.22
Financiera Nacional de Cuba	August 17, 1960	62,500.00
Mortgages	October 14, 1960	5,471,399.16
Bank Accounts	October 24, 1960	406,551.98
Agents' Balances	October 24, 1960	10,251.98
Receivables	October 24, 1960	9,279.79
Furniture and Fixtures	October 24, 1960	8,571.60
Petty Cash	October 24, 1960	150.00
Equity in Insurance Contracts	October 24, 1960	923,126.75
"Going Business"	October 24, 1960	187,941.00
	Total	\$9,748,859.82

The Commission reaffirms its conclusion that the taxes claimant owed to Cuba in the amount of \$6,059.55 should be deducted from the losses that occurred on October 24, 1960. Therefore, claimant's losses on October 24, 1960 amounted to \$3,200,428.89 (\$3,206,488.44 minus \$6,059.55).

Claimant is also entitled to interest at the rate of 6% per annum from the respective dates of loss to the date of settlement, as follows:

<i>FROM</i>		
August 6, 1960.....		\$1,008,472.22
August 17, 1960		62,500.00
October 14, 1960		5,471,399.16
October 24, 1960		3,200,428.89
	Total.....	\$9,742,800.27

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the remainder of the Proposed Decision as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that PAN-AMERICAN LIFE INSURANCE COMPANY suffered a loss, as a result of actions of the Government of

Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Million Seven Hundred Forty-Two Thousand Eight Hundred Dollars and Twenty-Seven Cents (\$9,742,800.27) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., July 6, 1971.

IN **THE MATTER** OF **THE CLAIM** OF WARREN AND **ARTHUR**
SMADBECK, INC., ET AL.

Claim No. CU-2465—Decision No. CU-967

Values of stock interests in nationalized Cuban corporations must be established as of the dates of loss. Evidence indicating values thereof several years prior to such dates of loss is insufficient to justify a Certification of Loss.

AMENDED PROPOSED DECISION*

Under date of January 17, 1968, the Commission issued a Proposed Decision denying this claim for lack of proof. The claim had been filed originally by WARREN AND ARTHUR SMADBECK, INC. Subsequently, the original claimant submitted evidence in support of this claim, which establishes, *inter alia*, that its wholly-owned Florida subsidiary, ST. AUGUSTINE SOUTH, INC., owned an interest in the property in question.

Upon consideration of the new evidence in light of the entire record, it is ORDERED that ST. AUGUSTINE SOUTH, INC., hereafter referred to as ST. AUGUSTINE, be added as party claimant; and be it further

ORDERED that the Proposed Decision be and it is herein amended.

The record shows that WARREN AND ARTHUR SMADBECK, INC., hereafter referred to as SMADBECK, was organized under the laws of New York, and that at all pertinent times more than 50% of SMADBECK'S outstanding capital stock was owned by nationals of the United States. An authorized officer of SMADBECK has certified under date of July 10, 1969 that 100% of SMADBECK'S outstanding capital stock was owned by nationals of the United States. The record further shows that ST. AUGUSTINE was organized under the laws of Florida, and that at all pertinent times 100% of its outstanding capital stock was owned by SMADBECK. The Commission holds that SMADBECK and ST. AUGUSTINE are nationals of the United States within the meaning of Section 502(1) (B) of the Act, which defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

PRESIDENTE CORPORATION

SMADBECK asserts that it owned a 100% stock interest in Presidente Corporation, a Cuban corporation hereafter referred to as Presidente. In

* This decision was entered as the Commission's Final Decision on April 14, 1971 after consideration of claimant's objections.

support thereof, SMADBECK has submitted copies of stock certificates and other evidence establishing that it owned 220 shares of preferred stock and 2,000 shares of common stock in Presidente. It is asserted that SMADBECK also owned 60 more shares of preferred stock in Presidente, but that the certificates for these additional 60 shares are not available. According to SMADBECK, Presidente's total outstanding capital stock consisted of 280 shares of preferred stock and 2,000 shares of common stock.

The record includes copies of a comparative balance sheet for Presidente as of March 31, 1957 and March 31, 1958 and supporting schedules (Exhibit MMM). SMADBECK states that no other financial statements or other evidence concerning the value of Presidente is available, all such records having been maintained in Cuba. With respect to Presidente's outstanding capital stock, the comparative balance sheet shows only 2,000 shares of common stock. There is nothing in the record to indicate why the preferred stock does not appear in that balance sheet.

The Commission finds it unnecessary to determine whether SMADBECK owned a 100% stock interest in Presidente since other factors are dispositive of this portion of the claim.

On October 24, 1960, Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the Presidente Corporation. Since Presidente was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1) (B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503 (a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

As indicated above, the only available evidence concerning the value of Presidente is its comparative balance sheet as of March 31, 1957 and March 31, 1958. That balance sheet shows that the net worth of Presidente, or the excess of its assets over its liabilities, as of March 31, 1957 was \$36,015.25 and as of March 31, 1958 was \$14,369.33, the Cuban peso being on a par with the United States dollar. If further appears from the supporting schedules accompanying the balance sheet that Presidente had a deficit as of April 1, 1956 in the amount of \$62,082.41; that it earned a profit of \$10,097.66 for the year ending March 31, 1957, leaving a net deficit of \$51,984.75; and that it had a loss for the year ending March 31, 1958 in the amount of \$21,645.92, resulting in a deficit of \$73,630.67 as of March 31, 1958. Inasmuch as its capitahe is shown as \$88,000.00 in the comparative balance sheet, the net worth of Presidente as of March 31, 1958 was \$14,369.33.

SMADBECK asserts a claim in the amount of \$14,000.00 for its stock interest in Presidente. It has submitted a copy of an extract from its records (Exhibit SSS) which indicates that SMADBECK's investment in preferred stock of Presidente was \$11,000.00 as of December 31, 1959. SMADBECK has stated that its investment in Presidente was \$14,000.00, including \$3,000.00 "allotted to the common stock" of Presidente held by stockholders of SMADBECK and later assigned to SMADBECK.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that while the amount of SMADBECK's investment in Presidente has some probative value, it is insufficient to establish the value of Presidente on October 24, 1960, the date of loss. The Commission finds that the comparative balance sheet for Presidente, indicating its value as of March 31, 1958, over 2 $\frac{1}{2}$ years prior to the date of loss, in likewise an insufficient basis for determining the value of a stock interest in Presidente on the date of loss.

Accordingly, it is concluded that SMADBECK has failed to meet the burden of proof with respect to the portion of its claim for a stock interest in Presidente. This portion of its claim is, therefore, denied.

GULFVIEW HOTEL, S.A.

SMADBECK asserts that it owned a 100% stock interest in Gulfview Hotel, S.A., a Cuban corporation also known as Hotel Vista del Golfo, S.A., hereafter referred to as Gulfview. It has submitted copies of stock certificates and other evidence establishing ownership of 490 shares out of a total of 670 shares of outstanding capital stock of Gulfview. SMADBECK states that it is unable to locate the other 180 shares of stock.

Here again, the Commission finds it unnecessary to determine the extent of SMADBECK's stock interest in Gulfview.

On the basis of the evidence of record, which indicates that Gulfview was affiliated with Presidente, the Commission finds that Gulfview was nationalized by the Government of Cuba on October 24, 1960.

SMADBECK claims \$19,333.34 as the value of its stock interest in Gulfview on the basis of its investment in acquiring assignments of the shares of stock on December 31, 1959. The only evidence which SMADBECK has submitted in support of its asserted value of said stock interest is a copy of a balance sheet for Gulfview as of December 31, 1957 (Exhibit 000). That balance sheet shows that the net worth of Gulfview as of December 31, 1957 was \$33,747.91. It further appears that as of January 1, 1957, Gulfview had a deficit of \$1,829.10 and earned a profit of \$2,077.01 for 1957, resulting in a surplus of \$247.91 as of December 31, 1957.

For the reasons stated with respect to the stock interest in Presidents, *mutatis mutandis*, the portion of SMADBECK's claim for a stock interest in Gulfview is denied.

NORTH SHORE REAL ESTATE CORPORATION

SMADBECK asserts that it owned a 100% stock interest in North Shore Real Estate Corporation, a Cuban corporation hereafter referred to as North Shore. It has submitted copies of stock certificates and other evidence establishing ownership of 30 shares out of an asserted total of 40 shares

of outstanding capital stock of North Shore. SMADBECK states that it is unable to locate the stock certificates for the other 10 shares.

For the reasons stated with respect to Presidente and Gulfview, no determination is being made as to the extent of SMADBECK's stock interest in North Shore.

The Commission finds that North Shore, which was also associated with Presidente, was nationalized by the Government of Cuba on October 24, 1960.

SMADBECK claims \$42,400.00 as the value of its stock interest in North Shore based upon its investment in acquiring assignments of the Shares of stock on December 31, 1959.

Inasmuch as the record contained neither a balance sheet for North Shore nor any other evidence upon which to determine the value of a stock interest in North Shore on the date of loss, the Commission suggested the submission of evidence in this respect. SMADBECK's response was that no evidence was available to establish the nature or value of North Shore's assets and liabilities. It submitted a copy of an extract from its books and records (Exhibit SSS), showing that its investment in North Shore as of December 31, 1959 was \$42,400.00. SMADBECK further stated that all records were left in Cuba, and that individuals with personal knowledge of the facts are now deceased or unavailable.

For the reasons stated with respect to Presidente and Gulfview, the portion of SMADBECK's claim for a stock interest in North Shore is denied.

DEBT DUE FROM PRESIDENTE

The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See *Claim of Kramer, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

SMADBECK asserts that it was owed a debt from Presidente in the amount of \$13,760.00. The record includes a cancelled check in the amount of \$3,000.00, drawn December 9, 1959, by ST. AUGUSTINE in favor of Presidente, and a bank statement establishing that ST. AUGUSTINE's bank account with a Cuban bank had been reduced by \$3,000.00 (Exhibit SS).

It is stated by SMADBECK that ST. AUGUSTINE was its agent for this purpose; that the balance of the amount claimed, \$10,760.00, was represented by funds in Cuba belonging to ST. AUGUSTINE; and that documents corroborating these statements were left in Cuba. Subsequently, SMADBECK submitted a copy of an abstract from its books and records (Exhibit SSS). That extract shows that as of December 31, 1959 Presidente was indebted to SMADBECK in the amount of \$8,000.00.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission finds that on October 24, 1960, the date of loss, Presidente was indebted to ST. AUGUSTINE in the amount of \$3,000.00, and to SMADBECK in the amount of \$8,000.00. The Commission concludes that claimants sustained losses in those amounts within the meaning of Title V of the Act.

DEBT DUE FROM GULFVIEW

SMADBECK claims that Gulfview owed it \$30,300.00. It states that the debt had been \$13,000.00; had been reduced to \$12,300.00, and that a

further loan of \$18,000.00 to Gulfview had been made by its agent, ST. AUGUSTINE, on February 18, 1960. The record includes a cancelled check for \$18,000.00, dated February 18, 1960, drawn by ST. AUGUSTINE in favor of Gulfview, and a bank statement establishing that ST. AUGUSTINE's bank account with a Cuban bank had been reduced by \$18,000.00 (Exhibit TT). A copy of an extract from SMADBECK's books and records (Exhibit SSS) shows that as of December 31, 1959 Gulfview owed SMADBECK \$12,300.00.

Based upon the entire record and in the absence of evidence to the contrary, the Commission finds that on October 24, 1960, the date of loss, Gulfview was indebted to ST. AUGUSTINE in the amount of \$18,000.00, and to SMADBECK in the amount of \$12,300.00. It is concluded that claimants sustained losses in those amounts.

DEBT DUE FROM NORTH SHORE

SMADBECK claims that North Shore owed it \$15,500.00. The record includes a copy of a note in Spanish and a translation thereof (Exhibits VV and WW), showing a debt due SMADBECK by North Shore in the amount of \$15,500.00; several letters corroborating this debt (Exhibits YY, ZZ, AAA and BBB); and a copy of an extract from SMADBECK's books and records (Exhibit SSS) as further proof of the debt due from North Shore.

On the basis of the foregoing evidence, the Commission finds that on October 24, 1960, the date of loss, North Shore was indebted to SMADBECK in the amount of \$15,500.00. It is concluded that SMADBECK sustained a loss in that amount.

REAL PROPERTY

SMADBECK claims the loss of real property consisting of an apartment house in Havana, Cuba, which it values at \$31,000.00 and certain other improved and unimproved property in Varadero Beach and Havana, Cuba, which it values at \$70,600.00.

The record includes an undated original memorandum prepared in Havana (Exhibit JJJ) and a letter, dated January 11, 1968 to a stockholder of SMADBECK indicating that an officer of SMADBECK had loaned \$31,000.00 to North Shore, apparently in April 1960, to enable North Shore to purchase certain real property in Cuba. It further appears that the \$31,000.00, which was used to make that loan, belonged to ST. AUGUSTINE.

On the basis of the entire record, the Commission finds that on October 24, 1960, the date of loss, North Shore was indebted to ST. AUGUSTINE in the amount of \$31,000.00. It is concluded that ST. AUGUSTINE sustained a loss in that amount.

With respect to the other claimed real property, SMADBECK states that it has been advised that it owned the following items of real property which cost \$70,600.00:

1. A swimming pool lot and house adjacent to the Presidente Hotel in Havana;
2. An apartment house on Presidente Avenue diagonally across the street from the Presidente Hotel;
3. A lot adjacent to the Havana Yacht Club;

4. A square block in Varadero Beach; and
5. A parcel of land with 1,200 feet of frontage on the road *which* separates it from the Hotel International in Varadero Beach.

However, there is no evidence in the record to corroborate ownership of the above real properties. SMADBECK states that all records concerning said properties were maintained in Cuba and are unavailable. Counsel's statement of January 22, 1970 indicates that the claimed real properties were held by Cuban subsidiaries, and that a former Cuban Ambassador to the United States, presently in Cuba, could attest to the acquisition thereof if he were available. It is noted that the extract from SMADBECK's books and records (Exhibit SSS), which shows its investments in Cuba as of December 31, 1959, fails to refer to said properties either as belonging to SMADBECK or in the form of a debt due from any Cuban corporation.

Upon consideration of the entire record, the Commission finds that SMADBECK has failed to sustain the burden of proof which respect to the portion of the claim for the asserted heoss of \$70,600.00 based upon the above-described real properties. Accordingly, this portion of SMADBECK's claim is denied.

CASH

SMADBECK asserts the loss of cash in the aggregate amended amount of \$46,007.26, representing a bank account with the Trust Company of Cuba in the amount of \$22,650.61, and other funds in Cuba in the amount of \$23,356.65.

The record includes a bank book and a translation thereof (Exhibits CCC and DDD), establishing that ST. AUGUSTINE had a savings account with the Trust Company of Cuba with a balance in its favor of \$15,148.32 as of December 9, 1959. It appears that the original deposit was \$15,000.00, and that interest in the aggregate amount of \$148.32 was added. SMADBECK has added interest at the rate of 5% compounded annually for the period December 1959 through March 31, 1968 to arrive at its claimed amount, \$22,650.61. In counsel's statement of July 17, 1959, it is admitted that the claimed interest has been projected, and that there is no available evidence to establish that such interest had been added to the account.

On the basis of the evidence of record, the Commission finds that all bank accounts belonging to either claimant, as found hereafter, were taken by the Government of Cuba on October 24, 1960.

The Commission finds that the savings account at the Trust Company of Cuba belonged to ST. AUGUSTINE. The Commission further finds that ST. AUGUSTINE's savings account earned no interest after October 24, 1960, the date of loss, since the account then belonged to Cuba. Moreover, on the basis of the evidence presented, the Commission finds no basis for concluding that the value of the savings account was increased by interest between December 9, 1959, the date of the last bank book entry, and the date of loss. A translation of the bank rules applicable to this account (Exhibit DDD) indicates that the bank reserved the right to pay or not pay any interest on this account. Accordingly, the Commission finds that the value of ST. AUGUSTINE's savings account on October 24, 1960 was \$15,148.32.

With respect to the claim for other funds in the amount of \$23,356.65, SMADBECK states that one of its agents in Cuba had collected \$13,009.32 in monies belonging to ST. AUGUSTINE and had not deposited the funds in any bank. In addition, claim is made for two checking accounts at the

Trust Company of Cuba in amounts of \$5,530.89 and \$4,816.44, respectively.

The evidence establishes and the Commission finds that ST. AUGUSTINE owned a bank account with the Trust Company of Cuba, having a value of \$5,530.89 as of August 31, 1960 (Exhibit EEE), and that SMADBECK owned a bank account with that bank, having a value of \$4,816.44 (Exhibit FFF). The Commission finds that claimants sustained losses in those amounts on October 24, 1960.

The record shows (Exhibit QQQ) that ST. AUGUSTINE's agent did collect monies in the amount of \$13,009.32, which ST. AUGUSTINE recorded on its records as an account receivable. It appears that the agent was unable to transfer the funds to ST. AUGUSTINE in the United States due to restrictions imposed by the Government of Cuba.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of ST. AUGUSTINE, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of this claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See *Claim of The Schwarzenbach Huber Company*, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966], and *Claim of Etna Pozzolana Corporation*, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that ST. AUGUSTINE sustained a loss in the amount of \$13,009.32 as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the loss occurred on November 30, 1961, 30 days after the last collections were made by ST. AUGUSTINE's agent as shown by correspondence from the agent (Exhibit QQQ).

RECAPITULATION

Claimants' losses within the meaning of Tithee V of the Act are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
<i>SMADBECK</i>		
Debt due from Presidente	October 24, 1960	\$ 8,000.00
Debt due from Gulfview	October 24, 1960	12,300.00
Debt due from North Shore	October 24, 1960	15,500.00
Checking account	October 24, 1960	4,816.44
	Total	\$40,616.44

ST. AUGUSTINE

Debt due from Presidente	October 24, 1960	\$ 3,000.00
Debt due from Gulfview	October 24, 1960	18,000.00
Debt due from North Shore	October 24, 1960	31,000.00
Savings account	October 24, 1960	15,148.32
Checking account	October 24, 1960	5,530.89
Debt due from Cuban agent	November 30, 1961	13,009.32
	Total	<u>\$85,688.53</u>

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in this case it is so ordered as follows:

<i>FROM</i>	<i>ON</i>
<i>SMADBECK</i>	
October 24, 1960	\$40,616.44
<i>ST. AUGUSTINE</i>	
October 24, 1960.....	\$72,679.21
November 30, 1961.....	13,009.32
Total.....	<u>\$85,688.53</u>

CERTIFICATION OF LOSS

The Commission certifies that WARREN AND ARTHUR SMADBECK, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended in the amount of Forty Thousand Six Hundred Sixteen Dollars and Forty-four Cents (\$40,616.44) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that ST. AUGUSTINE SOUTH, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-five Thousand Six Hundred Eighty-eight Dollars and Fifty-three Cents (85,688.53) with interest at 6% per annum on \$72,679.21 from October 24, 1960, and on \$13,009.32 from November 30, 1961, to the date of settlement.

Dated at Washington, D.C., April 22, 1970.

IN THE MATTER OF THE CLAIM OF THE COCA-COLA COMPANY

Claim No. CU-1743—Decision No. CU-6818

The value of an enterprise manufacturing a unique product which produced substantial profits may be determined by augmenting the value of its physical assets by an amount resulting from capitalizing its average annual net earnings.

FINAL DECISION

The Commission issued its Proposed Decision in this matter on September 22, 1971 certifying a loss to the claimant in the total amount of \$17,597,295.16, as follows:

On October 24, 1960	Land	\$ 2,265,881.00
	Buildings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	302,313.82
	Coolers & Dispensers	186,557.20
	Containers	2,005,000.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	981,912.84
	Added Value	3,500,000.00
		\$18,033,653.60
	Less Taxes	485,911.96
	Total	\$17,547,741.64
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguer assignment	18,738.47
	Total Loss	\$17,597,295.16

Claimant objected to several of the findings of the Commission and submitted further supporting evidence with respect thereto. Upon consideration of the entire record, the Commission now makes the following findings.

AUTOMOTIVE VEHICLES

In arriving at the value of this equipment, the Commission had considered the contention that the vehicles listed with values aggregating \$592,700.93 comprised approximately one-half the value of the equipment lost. However, the Commission relied on purchases for years 1956, 1957, 1958 and 1959, as shown by financial statements submitted, depreciated these at the customary rate of 15% a year and added the 1960 purchases. Claimant contends, however, that this method is not suitable for the type of vehicles under consideration, for evaluating the loss as of 1960.

As claimant points out, by 1960, the Cuban Government had imposed restrictions prohibiting the importation of vehicles, and as a result its then subsidiary Cia. Embotelladora Coca Cola, S.A., could not purchase, at any price, the needed vehicles, other than several route trucks acquired locally. Moreover, trucks such as those built for the purpose of transporting cases of Coca Cola are seen to have a useful life of many more years than ordinary vehicles.

The Commission now finds that in fact claimant possessed in Cuba more vehicles than those specifically listed in its available records, and further that the value of these on the date of loss was \$1,197,809, as contended by the claimant's officers and as supported by the record.

CONTAINERS

Claimant had originally asserted claim for 2,000,000 containers (one wooden case and 24 bottles) at a value of \$4.01 each for a total of \$8,020,000. In its Proposed Decision the Commission found that claimant had in Cuba 500,000 containers and valued these at \$2,005,000.

Claimant refers to statements of Mr. David E. Berenguer, former general manager at Camaguey and Havana, who concludes that the figure found is erroneous and adheres to his original estimate of 2,000,000 containers; and to the statement of Mr. Miguel B. Macias, an expert on bottling requirements, now manager of the engineering department of The Coca-Cola Export Corporation, and former manager of the engineering department of Embotelladora in 1960, who after careful analysis has concluded that the minimum requirements for Cuba in 1960 were 1,806,000 containers. Claimant points out that the cost of \$4.01 for containers represents \$3.41 as a current operating expense, and \$0.60 as a capital expense. Using the balance sheet (for September 30, 1960) figure of \$478,015.11 for containers, the claimant finds this may represent 796,691 containers.

Claimant points out, however, that considering the containers owned by Embotelladora on the date of loss were scattered in the hands of wholesalers, retailers, customers and in trucks, bottling plants, warehouses, and so forth, over an area of 44,218 square miles, Embotelladora could not ascertain exactly how many containers it owned. Accordingly, claimant now contends that it would be appropriate to use the average of the above three figures, finding 1,534,230 containers, of a value of \$4.01 each.

The Commission finds this method fair and reasonable and finds that claimant suffered a loss of \$6,152,262 with respect to the containers.

BANK ACCOUNTS AND CASH

In this connection the Commission found that a total of \$981,912.84 had been lost to the claimant in bank accounts and cash. This did not include a Royal Bank account entitled "West Indies Region" in the amount of \$6,529.82, as the record did not establish that this was taken by the Government of Cuba. However, claimant has now established that the latter sum was in fact on deposit in Cuba in the Royal Bank of Canada, and was taken by the Government of Cuba. Accordingly, the Commission now finds that claimant's total loss in this connection was \$988,442.66.

GOING BUSINESS VALUE

The claimant originally asserted a loss in the amount of \$17,807,042 for the value of its business over and above the value of its tangible assets. This has been discussed in the Proposed Decision. The Commission found the going concern value, on the basis of demonstrated earnings to investment to be minimal, and concluded that claimant suffered a loss in the amount of \$3,500,000 over and above the value of its physical assets.

Claimant contends that the figure is wholly inequitable, pointing to the uniqueness of the drink "Coca-Cola" which is based on a secret formula, with a trademark registered worldwide. Claimant also points out that advertising expenses for the years 1956 through 1960 (projected) averaged \$3,906,319—exceeding the value added by the Commission for its going business.

Further, it appears that sales of Coca-Cola in Cuba, from the outset of operations, were highly profitable. The sales for 1956 through 1960 (pro-

jetted) amounted to an annual average of \$7,336,889 and represented an annual increase of almost 20 per cent.

Claimant has also submitted figures for June 15, 1972, reflecting that stock market prices versus 1971 earnings showed price earnings for other soft-drink industries (Dr. Pepper, Coca-Cola, 7-Up, Royal Crown Cola, and Pepsi Cola) as averaging 42.6; and asserts that if this average were multiplied by Embotelladora profits for 1959, the last full year of normal operation, of \$1,026,394, the market value would amount to \$43,724,384.

The Commission is not persuaded that the above methods appropriately evaluate the going business above the physical assets. However, upon re-examination of the entire record in this respect and considering the net profits for 1958 (the last year before the Castro take-over) of \$607,405; for 1959 (the last year of full operation) of \$1,026,394; and for 1960 (annualized) of \$840,994.66, which average \$824,931.22, holds that multiplying this figure by 10 to \$8,249,312.20 is an appropriate reflection of the value of the business over and above the physical assets. This is slightly more than one-third the value of the tangible asset figure (as revised) and the Commission holds that this is fair and reasonable.

UNPAID TAXES

In its Proposed Decision, the Commission held that taxes due the Cuban Government must be deducted from the certifiable amount, under the principle of set-off, and found this amount to be \$485,911.96. However, the claimant has since submitted evidence establishing that of this amount \$130,344.68 was set up on the books of the Cuban branch as "Income Tax Accruals Due the United States" and the balance of \$355,567.29 represented taxes due the Cuban Government. Accordingly, the Commission now holds that only the amount of \$355,567.29 should be deducted from the amount certifiable to the claimant.

SUMMARY

The claimant's losses are restated as follows:

On October 24, 1960	Land	\$2,265,881.00
	Buildings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	1,197,809.00
	Coolers & Dispensers	186,557.20
	Containers	6,152,262.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	988,442.66
	Going Business Value	8,249,312.20
		\$27,832,252.80
	Less Cuban Taxes	355,567.29
	Total	\$27,476,685.51
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguer Assignment	18,738.47
	Total Loss	\$27,526,239.03

The Commission affirms its holding that interest shall be included in the Certification of Loss from the dates of loss to the date of settlement, as follows:

<i>FROM</i>	<i>ON</i>
October 24, 1960	\$27,476,685.51
January 30, 1961	30,815.05
February 13, 1961	18,738.47
	\$27,526,239.03

Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and the Proposed Decision is affirmed in all other respects.

CERTIFICATION OF LOSS

The Commission certifies that THE COCA-COLA COMPANY suffered a loss, and succeeded to losses as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Seven Million Five Hundred Twenty-Six Thousand Two Hundred Thirty-Nine Dollars and Three Cents (\$27,526,239.03) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$41,037,460.00, was presented by THE COCA-COLA COMPANY based upon asserted losses of its assets in Cuba, going concern value, and assignments of claims of certain employees.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k], as amended, 79 Stat. 988 (1965) J, the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503 (a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has stated that as of September 14, 1960 .2647% of claimant's outstanding capital stock was held by non-residents of the United States; and on April 18, 1967 .327% of its stock was held by non-residents of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The Commission finds on the basis of the evidence of record that claimant had owned a 100% stock interest in Cia. Embotelladora Coca Cola, S.A., a Delaware corporation, doing business in Cuba, hereafter referred to as Embotelladora. On August 19, 1960 a plan of liquidation of Embotelladora was adopted which transferred all properties of Embotelladora to the parent, which assumed all liabilities of the subsidiary. Embotelladora was dissolved August 22, 1960.

The record includes a report of Embotelladora to the United States Embassy as of June 29, 1960; schedules describing real property; a document transferring realty from Embotelladora to claimant; reports from sources abroad, photographs and drawings; schedules of personality; affidavits of officers and professional employees of claimant and the former subsidiary. On the basis of the entire record, the Commission finds that on October 24, 1960, claimant owned in Cuba certain real and personal property further described below.

On October 24, 1960 the Cuban Government published its Resolution 3 (pursuant to Law 851) listing Embotelladora as nationalized. Accordingly, the Commission finds that the properties of the claimant in Cuba were effectively nationalized or otherwise taken by the Government of Cuba on that date.

The record reflects that on June 29, 1960, Embotelladora reported the value of its assets to the American Embassy as follows:

Land.....	\$ 515,915.29
Buildings.....	2,030,240.44
Machinery & Equipment.....	1,763,642.79
Motor Vehicles.....	598,906.61
Coolers.....	186,054.48
Building under <i>Construction in Holguin</i>	37,460.00
Containers.....	459,305.92
Furniture & Fixtures.....	214,937.04
	\$5,806,462.57
Inventories (including cooling equipment).....	1,000,000.00
Bank accounts.....	350,000.00

\$7,156,462.57

The above values were stated to be as of May 31, 1960. Subsequent to the expropriation of October 24, 1960, Mr. Robert J. Thompson, former Vice President of Embotelladora, addressed a letter of protest to the President of the Republic, which letter set forth the values in Cuban pesos (which are on a par with the United States dollar) of certain items which, as Mr. Thompson states in his affidavit of October 10, 1968, are as remembered by him. The letter, a copy of which is of record, states, in pertinent part, that as of that day the assets which the Company had throughout the Republic were as follows:

	<i>Pesos</i>
Bank deposits	\$ 992,847.93
Accounts receivable	731,083.58
Sugar	34,640.69
Ingredients	79,112.63
Syrup, concentrate and bottled product	26,302.64
Coolers	91,335.33
Miscellaneous (including all kinds of spare parts)	288,697.59
Prepaid expenses	19,757.64
Miscellaneous accounts receivable	87,897.78
Land	515,915.29
Buildings	2,088,082.42
Machinery & equipment	2,635,752.42
Coolers on loan	186,557.20
Containers	478,015.11
	\$8,255,998.25

The claim as filed by claimant's letter of April 18, 1967 was for \$38,860,-972.86. By letter of November 20, 1968, claimant reduced its claim for realty by \$100,000 for 10,000 square meters of land in Holguin as to which title had not been perfected, and increased the claim by \$2,239,027.14 stating it had been ascertained by study and analysis of books and records that the property was worth more in October, 1960, than originally claimed.

By letter of December 24, 1968 claimant increased its claim by \$37,460.00 for expenses in connection with a proposed purchase of land in Holguin.

Claimant now describes its losses in a statement of November 11, 1968 as follows:

1. Real Property	\$ 2,265,881.00
2. Buildings and other improvements	5,351,681.00
3. Machinery & Equipment	2,230,000.00
4. Automotive Vehicles	1,197,809.00
5. Coolers and Dispensing Equipment	1,197,000.00
6. Containers	8,020,000.00
7. Furniture F. Fixtures	326,604.00
8. Inventories	720,098.00
9. Accounts Receivable	827,280.00
10. Bank accounts and cash on hand	988,442.00
11. Assignment of Claims of three employees	68,163.00
12. Extraordinary Expense (Holguin)	37,460.00
13. Value of Business as a Going Concern, Good Will, Trademarks, Formulas, etc	17,807,042.00
	\$41,037,460.00

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The items of claim, evidence submitted in support, and the Commission's findings in respect thereto, are set out below.

1. *Real Estate*

1. Land at Alejandro Ramirez 66, City of Havana, 3,755 square meters	\$ 342,870.00
2. Land at Santa Catalina 930, City of Havana, 19,615 square meters	1,078,825.00
3. Land at 6—8 Paseo de Marti, City of Santiago de Cuba, Oriente, 1,275 square meters	146,940.00
4. Land at Carretera al Acueducto, Avenida Marta, City of Santa Clara, 6,705 square meters.....	146,300.00
5. Land at Carretera Central, City of Artemisa, Pinar del Rio, 12,000 square meters	330,000.00
6. Land at Carretera Central Este y Ave. B, City of Camaguey, 10,043 square meters	220,946.00
	\$2,265,881.00

The land in 1 above is in three parts. Two parts were acquired by claimant in 1920 for \$82,000.00 including improvements and were transferred to Embotelladora in 1943; the third part was acquired by Embotelladora in 1950 at a price of \$24,500.00 including improvements.

Item 2 above was acquired on June 12, 1956 at a purchase price of \$374,262.00, Cuban currency, from the estate known as Calzada de Palatino.

Item 3 above was acquired by claimant in 1921 for \$48,000.00 and transferred to Embotelladora in 1943.

Item 4 above was acquired by Embotelladora in 1947 for \$20,955.37, and was part of a larger property named "Progreso", formerly known as "Esperanza."

Item 5 above was acquired by Embotelladora in 1948 for \$9,505.16 and was originally part of a former coffee plantation "Esperanza."

Item 6 above was acquired by Embotelladora in 1955, having been originally part of a property know as "Santa Mariana de Jayama" and later "La Perla de Jayama." It appears to have been acquired for the sum of \$29,017.43.

Claimant has submitted a 1960 affidavit by officers of the now dissolved Cia. Embotelladora Coca Cola, S.A., concerning the transfer of the land to claimant and describing it in detail. Additionally claimant has submitted an

affidavit executed on September 3, 1968 by Amadeo Lopez Castro, an engineer and surveyor who taught for over 30 years at the University of Havana the art and science of real estate appraisal and evaluation. He was also a former Cabinet Minister having held, *inter alia*, the positions of President of the National Industrial Commission, and Minister of Agriculture. The affidavit discusses each item of real property and the affiant ascribes the aforesaid fair market values to them, on the basis of his experience.

The Commission is aware of the appreciation in value of land, such as described, subsequent to these purchase dates and on the basis of the record and other information available as to values of property in Cuba, finds that the aforesaid real properties had the asserted values, aggregating \$2,265,-881.00, at the time of loss.

2. Buildings and Other Improvements

1. Office and warehouse building at Alejandro Ramirez 66, Havana, and resident building adjacent, known as San Francisco 39	\$ 314,312.00
2. Bottling plant and general office building at Santa Catalina 930, Havana	2,327,030.00
3. Bottling plant and office building at 6-8 Pasco de Marti, Santiago de Cuba	1,217,211.00
4. Bottling plant building at Carretera at Acueducto, Avenida Marta, Santa Clara	1,241,234.00
5. Bottling plant building at Carretera Central, Artemisa....	638,129.00
6. Bottling plant building at Carretera Central Este y Ave. B, Camaguey	673,765.00
	\$5,351,681.00

In support of the asserted evaluations of the improvements claimant has submitted affidavits of Miguel B. Macias, a mechanical engineer and former Manager of the Engineering Department of Embotelladora, and of claimant in Havana, whose duties included construction, erection, maintenance and supervision of buildings, plants, warehouses, bottling machinery, and auxiliary and automotive equipment of all kinds. These affidavits, in detail, were based on his knowledge, old drawings and photographs, and are supported by copies of construction plans and photographs. These affidavits are supported by those of Mr. Lopez Castro, David E. Berenguer, former Manager of claimant's Camaguey and Havana plants, and Robert J. Thompson, chief financial officer of Embotelladora, who concur in the opinions of Mr. Macias.

The buildings are generally described as follows:

Item 1(a)—Alejandro Ramirez 66, Havana

A 2-story building on two lots, the ground floor used as a bottling room with auxiliary facilities such as washrooms, carpentry shops, machine shop and superintendent's office; the second floor having been devoted originally in one-half part to general office space and one-half was used for a soft drink syrup manufacturing plant and sugar warehouse.

Item 1(b) a one-story steel warehouse fronting on Calle San Francisco, built in 1953 and used as a soft drink bottling plant.

Mr. Macias points out that an old drawing of 1922 shows a plant building

and auxiliary buildings, but that at the time of seizure two buildings covered the entire property. He further states that after construction in 1958 of the plant at Santa Catalina 930 (Item 2), machinery and equipment were removed from the Alejandro Ramirez building and it was thereafter used for warehousing. Mr. Macias further states as of January 14, 1970 that their improvements were appraised at a fair market value in October 1960 of \$314,312.

Item 2—Santa Catalina 930, Havana

An office building, a syrup manufacturing and bottling facility and garages, constructed in 1957 consisting of (1) a 2-story concrete office building, with a basement for industrial purposes and an underground storage tank of 1,050 cubic meters; (2) a concrete structure with ventilated roof having ground floor used as a bottling facility and related activities, a mezzanine used for a syrup manufacturing plant and similar activities, and a basement used as a garage machine shop; (3) a one-story concrete structure used as a paint shop; (4) two buildings of shed-type construction used for parking trucks under cover; (5) fencing around entire tract of cyclone-type heavy wire mesh.

Item 3—6-8 Paseo de Marti, Santiago de Cuba

A two-story reinforced concrete building, of irregular shape apparently built about 1947: Ground floor utilized for bottling room, superintendent's office, refrigeration compressor area, spare parts department, CO₂ gas area, stockroom; first floor utilized for concentrate manufacture, sugar storage, advertising material storage, general storage and conference room, mezzanine floor where offices were situated.

Two shed-type annex buildings of reinforced concrete used for truck loading, boiler room, machine shop and carpentry shop.

Item 4—Santa Clara plant

Two joined buildings constructed in 1948 as a facility for manufacturing soft drink syrups and beverages: One concrete building of three floors housing bottling facilities, offices, storage areas, manufacturing area, transformer room; one-story steel structure housing warehousing facilities, compressor room, boiler room, checker's office, loading area.

Item 5—Arrentisa Plant

Two separate steel Quonset type buildings erected in 1953 for manufacturing soft drink syrups and beverages and housing offices, manufacturing process, storage, and loading facilities.

Item 6—Camaguey Plant

Two buildings erected in 1955 for use as a soft drink bottling plant: Each a one-story, tile covered, steel structure, housing offices, manufacturing process, storage, and loading areas.

Further in support of the asserted values for buildings and related improvements claimant has submitted Affidavit No. 2 of Sr. Amadeo Lopez Castro, whose qualifications are set out above. In this affidavit, affiant states that he has examined the Macias affidavits and exhibits (being sketches or drawings) and gives his opinion that the buildings and related improvements (air conditioning, electrical installations and the like) had the fair

market values on the date of loss, as asserted by claimant; and further, that except for the improvements at Alejandro Ramirez 66, which was an older type of construction, the building and bottling plants, located on highly desirable first class industrial property, were of new and modern type construction of excellent quality. Moreover, the photographs submitted reflect the type of modern construction used.

The computations by which claimant reached the exact and uneven figures asserted for each plant are not of record. Although requested by the Commission, they have not been adduced. Mr. Macias, in his affidavit of January 14, 1970 reaffirms the appraisals of Mr. Amadeo Lopez Castro, as to the other improvements. Moreover, Mr. Lopez Castro, in his affidavit of January 15, 1970, has reaffirmed his conclusion on the values of the improvements. The Commission finds that the entire record substantiates the asserted values and finds that the improvements had the values asserted, in an aggregate amount of \$5,351,681, on the date of loss.

3. Machinery and Equipment

Claimant has asserted a value of 52,230,000.00 for machinery and equipment at all the locations of its operations in Cuba.

The item in support of this valuation is an affidavit by Rafael C. Laredo, a chemical engineer, engaged in engineering, selling and servicing heavy equipment of all kinds used in connection with the preparing and packaging of carbonated soft drinks; and employed as a Sales Engineer. However, from 1953 to 1960 he was Vice President and General Manager of Liquid Carbonic Corporation of Cuba. During this time his employer supplied much of the equipment used by Embotelladora. His responsibilities included thorough familiarity with equipment used by claimant, regardless of origin.

In his appraisal of the equipment, Mr. Laredo explains that the equipment necessary to properly prepare and bottle a carbonated beverage is known as a "bottling line." He gives his opinion as to the fair market value in October, 1960 of the equipment or bottling lines as follows:

1. Havana.....	\$1,200,000.00
2. Santiago.....	240,000.00
3. Santa Clara.....	325,000.00
4. Artemisa.....	225,000.00
5. Camaguey.....	240,000.00
	\$2,230,000.00

Also submitted with respect to the value of claimant's machinery and equipment in Cuba is an affidavit of Miguel R. Macias, former Manager of claimant's Engineering Department in Havana, previously mentioned.

Mr. Macias has appended to his affidavit approximately 69 pages listing about 1,107 categories of items, with their accessories, each reciting the value he ascribes as the fair market value in October, 1960. These lists were compiled from records of Embotelladora, transferred to claimant and necessarily incomplete. These values are summarized as follows:

1. (a). In General Offices, Havana	\$ 22,281.92	
Cost of Installation	4,456.38	
(b). Three bottling lines, Havana	910,890.13	
Cost of Installation	182,198.02	\$1,119,826.45
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2. Two bottling lines, Santiago de Cuba	201,663.24	
Cost of Installation	40,332.64	241,995.88
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3. Two bottling lines, Santa Clara	263,498.45	
Cost of Installation	52,699.69	316,198.14
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4. Two bottling lines, Artemisa	188,871.19	
Cost of Installation	37,774.22	226,645.41
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5. Two bottling lines, Camaguey	203,423.64	
Cost of Installation	40,684.72	244,108.36
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		\$2,148,774.24

The Commission has considered all of the evidence of record and finds that the machinery and equipment had a value of \$2,148,774.24 on the date of loss.

4. Automotive Equipment

In support of the asserted value of \$1,197,809.00 for this item, claimant has submitted several affidavits. The affidavit of Mr. Macias, specifically, includes lists of vehicles at each plant, aggregating \$592,700.93, which he declares as approximately one-half the value of the seized equipment. He gives it as his opinion that claimant lost in excess of 250 vehicles. The lists were compiled from original records of the claimant and may be summarized as follows:

	<i>Vehicles</i>	
1. (a). Havana General Office	15	\$ 43,325.83
(b). Havana plant	151	350,454.47
2. Santiago plant	27	72,360.97
3. Santa Clara plant	12	29,203.67
4. Artemisa plants	21	66,707.78
5. Camaguey plant	10	31,549.21
	<hr/>	<hr/>
	236	\$592,601.93

The lists include vehicle models of the years 1941, 1946, 1948 and later with the values stated apparently being the original purchase prices. The balance sheet dated September 30, 1960 for Embotelladora lists the original cost of the autos and trucks, without depreciation, as \$599,206.61. The rate of depreciation employed by claimant was 25% per annum, with the depreciated book value on December 31, 1959 appearing as \$156,113.46 in the audited financial statement for 1959 listing of asset accounts (Annex 11E, Exhibit D). The unaudited September 30, 1960 statement does not list the assets with depreciation separately, only the total cost of the assets not previously written off. The undepreciated value shown in September, 1960 of \$599,206.61 included \$94,295.61 added in the period between December 31, 1959 and September 30, 1960. In his affidavit of January 16, 1970, Mr.

Thompson, the chief financial officer, stated that the amount of \$599,206.61 was after deduction of depreciation of 25% per annum. However a close examination of all the financial records reveals that the high figure is before depreciation. He also stated that new trucks costing more than \$230,000.00 were acquired during the year 1960 but were not included in the unaudited statement. Such an expenditure is not evident from the Profit and Loss Statement for the period ending on September 30, 1960 nor is this amount included in the sum which Mr. Thompson demanded from the Cuban Government on October 26, 1960 as compensation for the property seized (Exhibit 9, Annex 11A).

The Commission finds that a fair value for the automotive equipment may be determined by depreciating the purchases for the years 1956, 1957, 1958 and 1959 at the rate of 15% per annum and adding such values to the amount paid out in 1960 and to the depreciated value of the equipment owned on December 31, 1955, as reflected in the financial statements for the years 1956-1960. The Commission concludes that the fair value of the auto and truck equipment as of October 24, 1960 was \$302,313.82.

5. *Coolers and Dispensing Equipment*

Claimant asserts a loss of \$1,197,000.00 for coolers and dispensing equipment at all of its plant locations in Cuba. In support thereof it has submitted the affidavits of Andres Gomez, former manager of its Cooler Department in Cuba; Louis R. Rossell-Castelnau, the purchasing agent of Embotelladora; David E. Berenguer and Juan M. Diaz, formerly chief internal auditor of Embotelladora.

This type of equipment was not manufactured in Cuba, being imported from the United States, and included the following:

- Coin controlled coolers
- Cup vending pre-mix machines
- Beverage tanks
- Fountain dispensers
- Open top refrigerator coolers, and spare parts.

Mr. Gomez listed some of the equipment with their locations, for which he specified a value of \$255,574.47, including 40% added for freight, insurance, duty, storage and handling charges. He set forth the specific equipment used in the Havana area having a value of \$617,500.00 and asserted that additional equipment valued at 40% of this amount was necessary to serve the remainder of Cuba. Lastly, he stated a value of \$332,500.00 for such equipment in storage. The other affidavits supported the statements of Mr. Gomez.

The equipment does not include similar equipment which claimant or its Cuban predecessor sold on conditional sales agreements. Any balances due on such contracts are included in the Accounts Receivable discussed below.

The financial statement for the period from December 31, 1955 to September 30, 1960 do not reflect the purchases asserted. On December 31, 1955, the records indicate coolers having a book value of \$8,112.64 on hand. In subsequent years the following additions were made: in 1956—\$31,660.76, in 1957—\$14,446.72, in 1958—\$16,619.53, in 1959—\$86,180.38, and in 1960—\$12,062.91, for a total on hand of \$169,082.94 without deduction for depreciation for those items added after 1955. Because of the broad discrepancy between the affidavits and the financial statements, the Commission

holds that the balance sheet of September 30, 1960 is the most appropriate measure of the value of the Coolers and Dispensing Equipment.

The Commission therefore finds that the value of this equipment on October 24, 1960 amounted to \$186,557.20.

6. Containers

Claim is made in the amount of \$8,020,000 for containers at all locations. Affidavits concerning this item of claim have been submitted from David E. Berenguer, Louis R. Rosselhe-Castelnaud, Juan M. Diaz, all previously mentioned, as well as Jose Joaquin Mestre, a former self-employed Distributor Agent of Embottelladora.

Mr. Berenguer points out that claimant operated its soft drink business in Cuba on the "returnable bottle system" under which it did not sell and convey title to containers such as bottles and cases, but maintained ownership throughout transactions involving sale of contents. Purchasers were required to make a cash deposit against return of bottles and cases. As General Manager he observed that the Havana facility did approximately 50% and Camaguey approximately 13% of the business and he was intimately familiar with the details of that 63% of claimant's business; and knew that similar conditions prevailed in Artemisa, Santa Clara and Santiago, which plants contributed 37% of the claimant's business. The system of distribution in Havana, Artemisa and Santiago was by means of Company-owned route trucks operated by Company employees; and the system of distribution used at Santa Clara and Camaguey and rural communities served by all plants was by means of independent distributors. Each such distributor maintained his own warehouse, route trucks and like equipment, and purchased beverages and made deposits on bottles and cases, delivering them from his warehouse to the retail dealers. Claimant sold goods to 137 such distributors who maintained 137 different warehouses with a stock of full and empty goods. It was not unusual for a distributor to have on hand several thousand cases each containing 24 bottles, either full, or empties to be returned against the deposit. The rural population purchased approximately 40% of claimant's good and it was accordingly necessary for the distributors to maintain an inventory of bottles and cases in excess of the requirements of the urban community served by the other system.

According to Mr. Berenguer, in the year 1959, the Camaguey plant purchased 200,000 new cases to maintain an annual sale of 1,200,000 cases whereas Havana required only 200,000 to maintain annual sales of approximately 6,000,000 cases. Mr. Berenguer is of the opinion that the claimant owned 2,000,000 cases of 24 bottles each on the date of expropriation, values at \$4.01 per case.

Mr. Rossell-Costelnaud, former purchasing agent, familiar with the methods of distribution, points out that sales and delivery in Havana and other urban cities were generally made three times a week, and in rural interior cities once a week, and in most sparsely populated territories once in about every two or three weeks. This system required a considerable number of bottles and cases. It was his experience that the average case and 24 bottles disappeared after approximately twelve trips. In 1959, he states, claimant sold approximately 12.5 million cases in the Island and that an average 8.5% container loss was not excessive and was customarily expected.

Mr. Rossell-Castelnuau has clarified the make-up of the unit price of \$4.01 used by claimant as follows: Bottles were purchased from Owens-Illinois Glass Co., f.o.b. its plant at Havana, at a contract price of \$2.33 per unit of 24 bottles, stating that this price was an artificial one fixed at about equal to the United States f.o.b. price of similar unit bottles, plus a sum representing freight and related charges, from the United States to Havana; and was calculated to protect the Cuban glass industry. Wooden cases with 24 compartments were purchased under similar conditions from Parada, Hnos, f.o.b. Havana, at 1.17 each. Further, packaging, freight, handling and storage costs were approximately \$.51 per case. He recites his opinion that the bottles and cases owned by claimant at date of seizure had a far market value of \$4.01 each.

Further, Mr. Rossell-Castelnuau opines that claimant had title to more than 2,000,000 cases on October 25-26, 1960, some in its possession in new inventory, more in the "float" between dealers and bottling plants, and even more in the hands (under the deposit system) of its dealers and ultimate consumers.

Under the claimant's accounting system, the initial cost of a case of bottles was written down when it was put into use, from \$4.01 to 60 cents, representing a deposit of two cents for each bottle and twelve cents for the case. The difference of \$3.41 was charged to expense of sale. The sixty-cent deposit was shown on the asset side of the balance sheet (under Property, Plant and Equipment—Containers) and the 60 cents owed the customer was shown on the liability side of the balance sheet (under the item Deposits on Containers).

Juan M. Diaz, former Chief Internal Auditor for Cuban operations, in his affidavit also discusses the accounting practices of the claimants and concludes with his opinion that claimant owned 2,000,000 cases of bottles, worth not less than \$4.01 per unit, which were expropriated.

The affidavit of Jose Joaquin Mestre concerns his experiences as a distributor of claimant's products. He engaged in his business at Moron, Camaguey, where he had an office and warehouse; and maintained sub-warehouses at Forencia and Chambas where he employed sub-agents, and warehouses in the commercial departments of Central Patria and Central Moron, which latter was the largest raw sugar mill in the world. He states that he sold an average of 110,000 cases of 24 bottles per year, estimating that all times he had on hand in his and the sub-agent's warehouses, and on trucks 25,550 cases full or empty. In addition he estimates that his dealers had an equal number of cases on hand or in the hands of customers. In his opinion the cases and bottles did not deteriorate or become less valuable with use. Bottles and cases were stated to disappear and must be replaced periodically because of breakage and failure of the customer to return them.

The financial statements, however, indicate that claimant had on hand in December 1955 containers valued at \$547,192.81. Additional purchases of containers for the succeeding years were: for 1956—\$381,455.53, 1957—\$453,126.13, for 1958—\$430,324.99, for 1959—\$939,313.62, and for 1960—\$102,778.94 for a total of \$2,791,192.02. During the same period a total of \$2,313,176.91 was written off, presumably when the containers were taken from storage and put in circulation and deposits of \$.60 per case were received from customers.

On the basis of the evidence of record, considering claimant's estimate

of the useful life of containers and the replacement purchases, the Commission finds that claimant had approximately 500,000 containers on hand for which a loss of \$2,005,000.00 was suffered.

7. Furniture and Fixtures

Claimant has asserted a loss of \$326,604.06 for the furniture, office fixtures and equipment at the following locations:

Havana Home Office	\$118,157.20
Havana Bottling Plant.....	123,927.01
Warehouse and Office.....	20,000.00
Santiago de Cuba.....	23,629.73
Santa Clara..... ^o	18,609.70
Artemisa..... ^o	11,813.95
Camaguey.....	10,466.47
	<hr/>
	\$326,604.06

The evidence in support of the claimed values consists of an affidavit of Juan M. Diaz and record cards listing each item, its cost and freight and tariffs paid if applicable. The affidavit of Mr. Diaz was accompanied by separate lists evaluating items of the equipment for the general offices and each bottling plant for which a separate record card had been filed. Mr. Diaz totalled the values for the items and added an additional 40% to cover the costs of freight, insurance, handling charges, duty and storage. The values listed for each item, however, are the same amounts as entered on the inventory cards for the total cost. The inventory cards indicate the source of the item, freight and duty paid, when applicable, and date of purchase or manufacture. A thorough review of the inventory cards reveals that most of the items were supplied by local dealers, and that freight and duty costs were included in the total costs. Mr. Diaz therefore has duplicated freight and duty costs in his extra allowance of 40% and the 40% includes freight and duty costs for those items purchased in Cuba for which such charges were not necessary. His appraisal is based also upon the original cost of the items and not on depreciated values although some items were ten, twenty and thirty years old. Accordingly, the Commission finds that the value as set forth in the asset listing for the financial statement of December 31, 1959 (\$114,259.18) plus the added purchase for 1960 (\$17,437.19) are most equitable for the Furniture and Fixtures.

On the basis of the entire record, the Commission finds that the value of the Furniture and Fixtures lost by claimant in Cuba on October 24, 1960 was \$131,696.37.

8. Inventories

Claimant asserts a loss of \$720,098.00 for its inventories of spare parts for machinery and other equipment, crowns, carbon dioxide, fuel, syrup and beverage ingredients, and other items necessary for the operation of a bottling business. The category does not include bottles, cases, coolers and other types of vending machines which were included in the headings "Coolers and Dispensing Equipment" and "Containers". Supporting the valuation are affidavits of Mr. Berenguer and Mr. Diaz which recite the fair market valuation as being \$720,098.00 but no records have been submitted in support thereof. Mr. Berenguer states "that the actual market value was considerably in excess of said amount for the reason that many

of the items carried in the inventory were of a class or kind not manufactured in the Republic of Cuba and for which importation permits had been denied for more than one year prior to the seizure and that therefore it is difficult for him to estimate the fair market value of items of which he had an inventory and which were readily saleable to others needing such item but which he was unwilling to sell and thus deprive his Company of the use of same."

The financial statements for the years 1958, 1959 and up to September 30 for the year 1960 record inventories as \$435,768.25, \$523,284.07 and \$320,088.88. These inventories include cooler, dispensers and vending machines for resale which are not included in Mr. Berenguer's calculation. In his demand on the Government of Cuba on October 26, 1960, Mr. Thompson included values for sugar, ingredients, syrup, concentrate and bottled product, and miscellaneous (including all kinds of spare parts) which totalled \$428,753.55.

On the basis of the entire record, the Commission finds that the most appropriate value for the inventories on October 24, 1960 is \$428,753.55.

9. Accounts Receivable

Claimant now asserts \$827,280.00 as its accounts receivable at the time of loss. In this connection it has submitted an affidavit of Juan M. Diaz, previously mentioned, who sets out that the enterprise's cash business represented about 60% of the approximate 14,000,000 case annual value of business, and credit for goods and container deposits about 40%.

Attached to Mr. Diaz's affidavit are detailed lists of Accounts Receivable as of August 31, 1960 which were the last accounts receivable reports made prior to expropriation. These lists were made by the managers of the Artemisa, Santa Clara, Camaguey and Santiago de Cuba plants, and the Matanzas sub-warehouse. Claimant has not located any similar reports for the Havana plant and General Office in Havana. Mr. Diaz, however, avers that he knows the last consolidated sum of accounts receivable reported by the Havana General Office on September 30, 1960, which included the Havana accounts receivable, so that he believes he can estimate with reasonable accuracy the aggregate of accounts receivable owed to claimant on about September 30.

The figures supplied by Mr. Diaz are as follows:

<i>Accounts Receivable at</i>		<i>Total</i>
<i>Artemisa Plant</i>		
Distributor Agents.....	\$ 17,351.79	
Local Trade Accounts.....	4,500.84	
Schools.....	217.90	
Sampling.....	2.40	
Compliments.....	72.96	
Coolers and Dispensing Equipment.....	\$ 54,151.10	
	<hr/>	
	\$ 76,296.99	
Adjustment—Add Salesman Debit.....	234.12	\$ 76,531.11
	<hr/>	
<i>Matanzas (Sub-warehouse under Havana Plant)</i>		
Coolers and Dispensing Equipment.....	\$119,230.35	
Adjustment—Deduct Dealer Credit.....	41.58	119,188.77
	<hr/>	

<i>Santa Clara Plant</i>		
Distributor Agents.....	\$ 72,232.72	
Local Trade Accounts.....	1,234.46	
Sampling.....	288.84	
Coolers and Dispensing Equipment	46,864.67	
	<hr/>	
	\$120,620.69	
Adjustment—Deduct Dealer Credit.....	322.28	\$120,298.41
	<hr/>	
<i>Camaguey Plant</i>		
Distributor Agents.....	\$ 64,728.06	
Local Trade Accounts.....	18.00	
Sampling	114.12	
Coolers and Dispensing Equipment.....	98,832.74	163,692.92
	<hr/>	
<i>Santiago de Cuba Plant</i>		
Distributor Agents.....	\$ 49,951.43	
Local Trade Accounts.....	2,297.18	
Coolers and Dispensing Equipment	24,024.14	76,272.75
	<hr/>	
	Sub-total	\$555,983.96
Total Havana estimated from Management reports at September 30, 1960.....		175,099.62
<i>General Office Havana, estimated</i>		
Miscellaneous Accounts Receivable at September 30, 1960		96,196.76
	<hr/>	
	Totals	\$827,280.34

In his letter of October 26, 1960 to the Cuban Government, Mr. Thompson listed the assets of claimant in Cuba and the amount set out for Accounts Receivable was \$731,083.58. The same figure was entered in the unaudited financial statement of September 30, 1960 for these accounts.

The Commission finds that the most appropriate value of the Accounts Receivable is that in the September 30, 1960 financial statement and Mr. Thompson's letter and that claimant suffered a loss of \$731,083.58 on October 24, 1960 for the Accounts Receivable.

10. Cash and Bank Accounts

Claimant asserts \$988,442 as its loss in connection with cash and deposits in banks in Cuba. Mr. Diaz has submitted an affidavit in this connection setting out the fact of his audit of claimant's books of accounts compiled by accountants under Mr. Noel Perez, the Controller. These included Mr. Juan Mir, now deceased, who made a daily cash report. His report for October 24, 1960 has been submitted. The bank deposits listed thereon and taken by the Government of Cuba on October 24, 1960 are as follows:

Acct. No.	Bank	Location	Amount
101-1P-2035	The First National City Bank (New York)	Havana	\$ 43,321.29
101-1	The First National City Bank (New York)	Santiago	5,858.20
101-2	The Royal Bank of Canada	Santa Clara	903.88
101-3	The Bank of Nova Scotia	Camaguey	6,328.27
102-1	The First National City Bank (New York)	Havana	49,000.00
102-1	The First National City Bank (New York)	Santiago	14,800.00
102-2	The Royal Bank of Canada	General Office	826,101.20
102-2	The Royal Bank of Canada	Santa Clara	14,750.00
102-3	The Bank of Nova Scotia	Camaguey	9,900.00
102-4	Banco Continental Cubano	Artemisa	5,750.00
102-10	(Petty Cash)	Cuba	5,200.00
			\$981,912.84

The above bank accounts are supported by bank statements which are in somewhat different amounts but tend to show the relative consistency and stability of the accounts in comparison with Mr. Mir's statement. One item in the Mir report is slightly higher due to denial of foreign exchange.

On the basis of the entire record, the Commission finds that the claimant's bank accounts, taken by the Government of Cuba on October 24, 1960 were in the aggregate amount of \$981,912.84.

No allowance is made for a Royal Bank account entitled "West Indies Region" in the amount of \$6,529.82 nor for an account of \$2,584.58 in Barclay's Bank D.C.O., Barbados, as it is not shown that these were taken by the Government of Cuba. The latter account in fact was not here claimed.

11. and 12. *Extraordinary Expenses Including Assignments*

Claimant seeks reimbursement in the amount of \$105,623 for expenses described by it as extraordinary. These are in two categories:

Assignment of claims for taking of property from:

R. M. Thomas (now deceased).....	\$30,815.05	
Robert J. Thompson.....	18,610.00	
David E. Berenguer.....	18,738.47	\$ 68,163.52

Proposed purchase of land.....	\$35,000.00	
Preparation of building plans.....	2,460.00	37,460.00

\$105,623.52

In connection with the assignment of claims, claimant sets out that in 1960 it entered into agreement with Messrs. Thomas and Berenguer, United States citizens, and Robert J. Thompson, a Canadian citizen, to protect them from any financial loss with respect to their personal property.

On October 25, 1960 Mr. and Mrs. Thomas were absent from Cuba and Mr. Berenguer left on October 29, 1960, taking only hand luggage.

On January 30, 1961 Mr. Thomas made an assignment to claimant of his interest in personalty left in Cuba valued at \$30,815.05; and on February 13,

1961 Mr. Berenguer executed a similar assignment as to personalty in Cuba valued at \$18,738.47. Each assignment is accompanied by an itemized list of personalty. In an affidavit of November 1, 1968, Charles W. Adams, Vice President of claimant, avers that payment was made to Messrs. Thomas and Berenguer in the specified amounts.

The Commission finds that the personal property of Messrs. Thomas and Berenguer, officers of the claimant, was also taken by the Government of Cuba on October 24, 1960, and the Commission concludes that they suffered losses within the meaning of Title V of the Act as a result of the taking of their property by the Government of Cuba.

Thereafter, and prior to filing of this claim, Messrs. Thomas and Berenguer assigned their claims against the Government of Cuba to claimant. The Commission finds that \$30,815.05 and \$18,738.47 represents the fair value of the property taken in each instance. Accordingly the Commission finds that claimant succeeded to losses in the aggregate amount of \$49,553.52 within the meaning of Title V of the Act.

With respect to claim based on an assignment by Robert J. Thompson in the amount of \$18,610.00 the claimant and Mr. Thompson affirm that he is not a national of the United States. Title V provides for determination of claims that have been continuously United States owned from the date such claims arose. Accordingly, the Commission is constrained to and hereby does deny this item of claim.

Regarding the second category of extraordinary expenses, added to the claim on December 24, 1968, claimant states that Embotelladora, apparently in 1959, decided to build a plant in Holguin. A property was selected and an oral agreement was made with the owner, whose exact name is not recollected, to purchase the land for \$35,000.00. Thereafter it appears that the Government of Cuba proposed to expropriate the land and deed it to claimant, whereupon claimant states it secretly paid \$35,000.00 to the owner who was to deed it to claimant or through the Cuban Government assist Embotelladora to acquire the land.

Thereafter claimant states it expended \$2,460.00 for the preparation of preliminary plans for a new plant. It is said that the Cuban Government then precluded further acquisition of realty by American companies. This item was reported as an asset, Building under Construction, by Embotelladora on June 29, 1960, to the United States Embassy.

Nevertheless, the uncertainty surrounding this element of claim, including name of owner, as well as uncertainty as to record title, compels the Commission to conclude that claimant has not established that it suffered a loss in this connection as a result of actions of the Government of Cuba. Accordingly, this item of claim is denied.

13. *Going Concern, Good Will, etc.*

Claimant has asserted a loss in the amount of \$17,807,042.00 for the value of its business over and above the value of its tangible assets. The asserted value is the difference between the claimed value of the assets (\$23,830,418.00) and \$41,000,000.00 (at one time the total amount claimed).

Claimant has submitted an appraisal of the Cuban enterprise by Charles N. Battle & Associates which determined the value of the Cuban business by comparison with a Coca-Cola bottling company sold in Miami, Florida in 1963. *Although* no value is stated for the tangible assets of the Florida company, it appears that \$11,500,000.00 was paid for that company *which*

had several bottling plants in that area. On the basis of the average net income for the Miami company, the purchase price was approximately 60 times its average net income. The purchase price was also approximately \$7.00 per person residing in the Miami company's territory, and about \$2.00 per case sold in the year prior to the transfer of the company. The values for the Cuban business using the above measures would be

- | | |
|---|-----------------|
| 1. 60 times average annual income (\$772,432.00)..... | \$46,345,920.00 |
| 2. \$7.00 per person for 7,000,000 population..... | \$49,000,000.00 |
| 3. \$2.00 per case, 13,742,000 expected to be sold in 1960 | \$27,484,000.00 |

The appraiser averaged the three sums which were rounded to an average value of \$41,000,000.00 for the value of the Cuban business. Mr. Battle stated therefore that \$41,000,000.00 was a fair and accurate estimate of the Cuban business and affidavits of Coca-Cola company officials state that the business would not have been sold for less.

The use of such methods of determining the value of a Cuban enterprise does not appear a valid one inasmuch as the comparison is between the Miami market, with a per capita income of over \$1,900.00 and a predominantly urban population and the Cuban market with a per capita income of approximately \$300.00 and a large rural population. Moreover there is no information given as to the assets of the Miami corporation to afford a proper basis for comparison when different localities are considered. Nor does an average annual income of \$772,430.00 justify an investment of \$41,000,000.00.

The Commission has determined in many cases that the value of a going concern was 10 times the average annual net earnings. (See *Claim of General Dynamics Corporation*, Claim No. CU-2476.) However, in the instant claim, this amount would be \$7,724,320.00, using the average annual income computed by claimant, and less than the value of claimant's assets as determined herein. The going concern value on the basis of demonstrated earnings to investment is therefore minimal. Furthermore, without claimant's syrup formulas, the Cuban plants become ordinary bottling plants.

However, the Commission recognizes that claimant had suffered a loss over and above the value of its physical assets since the Cuban branch had been operating over forty years and had organized a Coca-Cola distribution system covering the island of Cuba. Based upon the complete record, the Commission finds that claimant suffered an additional loss therefor in the amount of \$3,500,000.00.

Claimant's Cuban losses, other than those to which it succeeded by reason of the assignments from its employees total \$18,033,653.60. The Commission has determined, however, that taxes due the Cuban Government in the amount of \$485,911.96, as reflected in the September 30, 1960 balance sheet must be deducted (see *Claim of Simmons Company*, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77). The asset loss is reduced therefore to \$17,547,741.64.

Summary

Claimant's losses within the meaning of Title V of the Act are found to be as follows:

On October 24, 1960	Land	\$ 2,265,881.00
	Buihedings	5,351,681.00
	Machinery & Equipment	2,148,774.24
	Automotive Vehicles	302,313.82
	Coolers & Dispensers	186,557.20
	Containers	2,005,000.00
	Furniture & Fixtures	131,696.37
	Inventories	428,753.55
	Accounts Receivable	731,083.58
	Bank Accounts & Cash	981,912.84
	Added Value	3,500,000.00
		\$18,033,653.60
	Less Taxes	485,911.96
	Total Loss	\$17,547,741.64
On January 30, 1961	Thomas Assignment	30,815.05
On February 13, 1961	Berenguer Assignment	18,738.47
	Total Losses	\$17,597,295.16

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Liste Corporation*, Claim No. CU-0644), and in the instant claim it is so ordered as follows:

FROM	ON
October 24, 1960.....	\$17,547,741.64
January 30, 1961.....	30,815.05
February 13, 1961.....	18,738.47
Total.....	\$17,597,295.16

CERTIFICATION OF LOSS

The Commission certifies that THE COCA-COLA COMPANY suffered a loss, and succeeded to losses as a result of actions of the Government of Cuba, within the Scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount Seventeen Million Five Hundred Ninety-seven Thousand Two Hundred Ninety-five Dollars and Sixteen Cents (\$17,597,295.16) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., September 22, 1971.

IN THE MATTER OF THE CLAIM OF M & M DREDGING & CONSTRUCTION CO., ET AL.

Claim No. CU-0219—Decision No. CU-3536

Cost of replacement as a method of valuation means replacement in kind, taking into consideration the age and condition of properties on the date of loss, it does not mean the cost of replacing properties in question with new properties.

PROPOSED DECISION LL

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the aggregate amount of \$1,186,201.00 was presented by M & M DREDGING & CONSTRUCTION CO. and C L O CORPORATION based upon the asserted loss of a dredge, tug, barge, crane, bulldozers, air compressor and related pile driving equipment, supplies and accessories.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. § 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503 (a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

NATIONALITY

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation of entity.

The record shows that both claimants were organized under the laws of Florida and that at all pertinent times all of both claimants' outstanding capital stock was owned by nationals of the United States. The Commission holds that both claimants are nationals of the United States within the meaning of Section 502(1) (B) of the Act.

OWNERSHIP

It appears from the evidence of record that M & M DREDGING & CONSTRUCTION CO., hereafter referred to as M & M, was engaged in heard reclamation operations in the vicinity of Varadero, Cuba, prior to the advent of the Castro Government in Cuba in January 1959. In connection with these activities, M & M employed the various items of personal property for which claim is made. The evidence includes: (a) two

* This decision was entered as the Commission's Final Decision on March 26, 1969.

certificates from the U.S. Bureau of Customs, dated August 9, 1961, showing that M & M had been duly registered as the sole owner of a dredge, called the "Cuba," built in 1915, with a gross tonnage of 302, and an "oil screw," called the "Thomas" (identified by claimants as a tug), built in 1942, with a gross tonnage of 16, and that these two vessels were not subject to any mortgages, liens or other encumbrances; (b) a bill of sale registered with the Bureau of Customs showing that C L O CORPORATION, hereafter referred to as C L O, purchased on October 20, 1949 a barge, called the "Atlantis," together with all of its accompanying equipment, being of steel construction and having a length of 230 feet. Neither the age of the vessel nor the consideration paid therefor appear in this document, and it does not appear whether there were any outstanding liens or mortgages against the vessel; (c) a certificate from the U.S. Coast Guard, dated August 9, 1961, showing that the U. S. Dredging Company, of Miami, Florida, had been duly registered as the sole owner of a dredge tender, called the "Ram" (identified by claimants as a steel workboat), built in 1954 of steel construction with a length of 28 feet 2 inches, a diesel rig and a 165 horse power engine. The cost of construction is not shown.

On the basis of the foregoing evidence, the Commission finds that M & M was the sole owner of the dredge "Cuba" and the tug "Thomas," that C L O was the sole owner of the barge "Atlantis," and that the U. S. Dredging Company was the sole owner of the steel workboat "Ram." The record establishes that the U. S. Dredging Company was organized under the laws of Florida and that at all pertinent times all of its outstanding capital stock was owned by nationals of the United States. The Commission therefore holds that the U. S. Dredging Company was a national of the United States within the meaning of Section 502(1) (B) of the Act. It further appears from the record that on August 30, 1963, the U. S. Dredging Company merged with M & M under the name of M & M DREDGING & CONSTRUCTION CO. Accordingly, M & M succeeded to all rights of the U. S. Dredging Company with respect to the steel workboat "Ram."

On the basis of other evidence of record including bills of sale, certified statements from drydock, machinery and engineering companies, a bill of sale dated November 30, 1948, balance sheets, affidavits and statements from officials of claimants, the Commission finds that M & M also owned a plant, supplies and equipment appurtenant to its dredge "Cuba," a steel crane barge with an Osgood crane, a Lima crane acquired in 1948, a D-6 Caterpillar Bulldozer, a D-4 Caterpillar Bulldozer, a diesel air compressor, and miscellaneous pile driving equipment and accessories.

Loss

All of the foregoing property was being used by M & M in its land reclamation operation in Cuba, the barge "Atlantis" and the steel workboat "Ram" being under lease to M & M. The record includes affidavits dated August 15, 1961 and October 28, 1967, from Gregorio Argelio Medina, a Cuban lawyer who had acted on behalf of M & M in Cuba and was present in Varadero, Cuba in November 1959. According to his testimony, Cuban authorities seized all of the property for which claim is made herein and precluded him from boarding the dredge "Cuba". Upon his protest to Cuban authorities on behalf of M & M, he was jailed and subsequently compelled to leave Cuba. These facts are confirmed by an affidavit dated September 18, 1961 by Mr. C. Osment Moody, the then president of M & M

and the U.S. Dredging Company, and secretary-treasurer of C L O, submitted to the Department of State.

In the absence of evidence to the contrary, the Commission finds that all of the property for which claim is made herein, described above, was taken by the Government of Cuba without compensation on November 7, 1959, as stated by claimants. Accordingly, the Commission further finds that claimants sustained losses within the meaning of Title V of the Act as a result of actions of the Government of Cuba.

VALUATION

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value; going concern value, or cost of replacement.

Claimants have computed the amounts of their respective losses on the basis of the costs of replacing their properties with new properties, supported by estimates from various shipbuilding, machinery and equipment concerns, dated in October 1962. Accordingly, the claim of M & M was filed in the amount of \$1,186,201.00 and the claim of C L O in the amount of \$250,000.00. However, the claim filed with the Department of State in October 1961 asserted the aggregate amount of \$511,950.00 on account of all losses sustained by M & M, C L O and the U. S. Dredging Company.

As noted above, the Commission consistently has construed the language of Section 503(a) relating to the evaluation of loss to be no different from the international legal standard normally prevailing, which the Commission has applied in claims under the Act. The Commission finds no basis for concluding that the statutory reference to "cost of replacement" means the cost of replacing the properties in question with new properties. Upon careful consideration of this matter, the Commission holds that the term "cost of replacement" means replacement in kind, taking into consideration the age and condition of the properties on the date of loss, and that all of the specific bases mentioned in Section 503(a) are merely standards for determining the value of property on the date of loss.

In the instant case, the Commission has carefully considered the entire record bearing on the question of valuation including balance sheets for the U. S. Dredging Company, M & M and C L O, as of January 31, 1956, February 28, 1957, and June 30, 1956, respectively, as well as affidavits from Harold B. Wells and Charles Schultz, dated September 13, 1968, and a statement from a Cuban insurance concern. Mr. Wells testified that he was General Superintendent of Operations in the Republic of Haiti on construction operations involving the dredge "Cuba" and that in 1953-1954 this dredge was converted from stean power to diesel electric power at a

cost in excess of \$250,000.00. Similar statements are contained in the affidavit of Mr. Schultz who was Captain and Master Mechanic on the dredge "Cuba". However, Mr. Schultz stated that he did not have access to cost records but appraised the value of the improvements as being in excess of \$250,000.00 on the basis of his experience. Mr. Wells who was an official of the Government of Haiti does not indicate the basis for his statements. The Cuban insurance concern stated in a letter dated October 16, 1968 that the total insurance carried for the property in question was in excess of \$500,000.00.

The Commission notes that the balance sheet for M & M, certified to be a true copy and correct by an officer of M & M, is dated February 28, 1957, subsequent to 1953-1954 when the asserted improvements to the dredge "Cuba" were made. That balance sheet shows the fixed assets as follows:

Autos and trucks.....	\$ 6,891.78
Key Largo Property.....	15,267.29
Machinery & Equipment.....	22,083.00
Office Equipment.....	2,277.67
Tugs, Barges & Dredges.....	25,410.02
Warehouse.....	11,789.29
<hr/>	
Total.....	\$83,719.05
Less Reserve for Depreciation.....	37,772.82
<hr/>	
Net Value of Fixed Assets	\$45,996.23

The balance sheet of the U. S. Dredging Company of January 31, 1956 shows the following capital assets:

Dredges & Equipment.....	\$149,443.68
Less Reserve for Depreciation.....	84,983.77

Total Capital Assets.....64,459.91

In neither of the foregoing balance sheets are any of the items identified so that they can be related to the various pieces of personal property involved in this claim. Claimants have stated that they have no other financial statements, and it is clear from claimants' last letter, dated November 21, 1968, that no further evidence is available.

The balance sheet of C L O as of June 30, 1956 shows the following under the heading, "Fixed Assets":

Barge "Atlantis".....	\$17,088.52
Buildings.....	31,562.82
Fence.....	1,521.50

Total.....	\$50,172.84
Less Reserve for Depreciation.....	16,727.41

Land.....	\$33,445.43
	51,027.40

Net Value of Fixed Assets.....\$84,472.83

The record also includes copies of two checks, drawn by M & M in December 1950 in the aggregate amount of \$14,000.00 with notations that the checks were in payment for the purchase of the steel crane barge. A bill of sale, dated November 30, 1948, shows that M & M purchased a Lima Crane in consideration of \$12,000.00 and a used Lorain Crane "traded in". Other evidence indicating other purchases by M & M of property involved in this claim do not show the costs.

Claimants assert that the values of the various items of personal property claimed herein were as follows on the basis of replacement costs for new properties:

Dredge "Cuba".....	\$ 600,000.00
Attendant plant to dredge.....	53,000.00
Barge "Atlantis".....	250,000.00
Steel Crane Barge.....	25,000.00
Steel Workboat "Ram".....	25,000.00
Tug "Thomas".....	110,000.00
Lima Crane.....	37,578.00
D-6 Caterpillar Bulldozer.....	22,510.00
D-4 Caterpillar Bulldozer.....	15,298.00
Diesel Air Compressor.....	20,465.00
Miscellaneous Pile Driving Equipment.....	27,350.00
Total claim for both claimants.....	\$1,186,201.00

Having carefully considered all the evidence of record, the Commission finds that the valuations most appropriate to the properties herein and equitable to the claimants are those set forth in detail in the said affidavit, dated September 18, 1961, of Mr. C. Osment Moody, which was submitted to the Department of State along with supporting documents.

Accordingly, the Commission finds that the values of the properties taken from M & M and from the U. S. Dredging Company, to which M & M succeeded, and the value of the property taken from C L O were as follows on November 7, 1959, the date of loss:

M & M DREDGING & CONSTRUCTION CO.

Dredge "Cuba".....	\$225,000.00
Attendant plant and equipment.....	45,000.00
Tug "Thomas" ..	40,000.00
Steel crane barge.....	30,000.00
Lima crane.....	10,450.00
Steel workboat "Ram".....	10,000.00
D-6 Caterpillar Bulldozer.....	8,000.00
D-4 Caterpillar Bulldozer.....	6,500.00
Diesel Air Compressor.....	9,650.00
Miscellaneous pile driving equipment and accessories.....	27,350.00
Total.....	\$411,950.00

C L O CORPORATION

Barge "Atlantis".....	\$100,000.00
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Accordingly, the Commission concludes that the M & M DREDGING & CONSTRUCTION CO. suffered a loss in the aggregate amount of \$411,950.00 (including the loss suffered by the U. S. Dredging Company, to which this claimant succeeded), and that the C L O CORPORATION suffered a loss in the amount of \$100,000.00.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU—0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that M & M DREDGING & CONSTRUCTION CO. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Eleven Thousand Nine Hundred Fifty Dollars (\$411,950.00) (including the loss suffered by the U. S. Dredging Company, to which this claimant succeeded), with interest at 6% per annum from November 7, 1959 to the date of settlement; and

The Commission certifies that C L O CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thousand Dollars (\$100,000.00) with interest at 6% per annum from November 7, 1959 to the date of settlement. Dated at Washington, D.C., February 26, 1969.

IN THE MATTER OF THE CLAIM OF OLGA LENGYEL

Claim No. CU—3669—Decision No. CU—6827

Value of paintings may be determined by appraisal of an art expert who acted as agent in purchasing them.

PROPOSED DECISION *

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$5,274,663.00, was presented by OLGA LENGYEL, based upon the asserted loss of certain real and personal property in Cuba, and stock interests in Cuban enterprises. Claimant has been a national of the United States since naturalization in 1951.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643—1643k (1964), as amended, 79 Stat. 988 (1965)] the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States,

* This decision was entered as the Commission's Final Decision on June 30, 1972.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Claimant asserts the following losses:

1. Two penthouse apartments in Vedado.....	\$ 108,170.00
2. Household furnishings, including objects of art	2,353,318.00
3. Automobile, golf car and furs.....	19,000.00
4. Paintings.....	2,214,000.00
5. Jewelry and platinum box taken from attorney's office	375,000.00
6. Cash also taken from attorney's office	60,000.00
7. Cash in safe in apartment	21,325.00
8. Cuban currency.....	11,750.00
9. Stock interests in Cuban corporations	112,100.00
Total	\$5,274,663.00

On the basis of the evidence of record the Commission finds that claimant owned certain items subject of this claim as further discussed below.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

PENTHOUSE APARTMENTS

Based upon the evidence of record including copies of the deeds to the two apartments, affidavits of claimant, a pre-nuptial agreement and other documents, the Commission finds that claimant was the sole owner of the two apartments, known as Apartments 15-B and 15-D located at 201 Primera Avenida in Vedado, Havana.

Claimant's Cuban attorney states that claimant and her husband fled Cuba in September 1960.

On October 14, 1960, the Government of Cuba published in its Official

Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15).

Based on the foregoing and the evidence of record, the Commission finds that claimant's apartments in Vedado were taken by the Government of Cuba pursuant to the provisions of the Urban Reform Law; and, in the absence of evidence to the contrary, that the taking occurred on October 14, 1960, the date on which the law was published in the Cuban Gazette. (See *Claim of Henry Lewis Slade*, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39) The Commission further finds that the contents of the two apartments were taken at the same time.

The aforementioned deeds reflect that claimant purchased Apartment 15-B on March 4, 1958 for \$38,000 subject to a \$16,000 mortgage, and Apartment 15-D on December 18, 1958 for \$25,000. The record also reflects that after their purchase claimant made extensive alterations and improvements to both apartments with the result that the total cost of Apartments 15-B and 15-D including legal fees and taxes was \$66,870 and \$41,800, respectively.

Based on the entire record the Commission finds that the value of Apartments 15-B and 15-D including improvements on the date of loss was \$66,870 and \$41,800 and that claimant had reduced the mortgage on Apartment 15-B to \$13,500. After deduction of the mortgage, the Commission finds that claimant suffered a total loss of \$75,170 as the result of the taking by the Government of Cuba of these two apartments.

*Household Furnishings, Appliances, Objects of Art,
Automobile and Miscellaneous Items*

The record includes detailed listings of the furniture, furnishings, appliances, as well as a 1958 Chrysler Saratoga, golf car, cameras, objects of art, and other miscellaneous items in the two apartments, with their estimated values. There are also affidavits of two officials of the British Commonwealth Insurance Company who had appraised the personalty in Apartment 15-B in 1958; a statement by the president of the American International Insurance Company who stated that he had appraised the personalty in both Apartment 15-B and 15-D, a letter from a former occupant of both apartments, subsequent to claimant's departure, and claimant's affidavit.

Under date of November 28, 1971, claimant submitted an appraisal of the above items of personal property, which are considered art objects, made by Mr. Louis Zara and prepared on the basis of information supplied by claimant. Mr. Zara states that he researched the sales prices of similar art objects, which he listed under the column "Gallery Price Realized", and set forth his opinion under the column "Appraiser's Estimate For 1960". The asserted sales prices are shown as aggregating \$4,342,976.00 and Mr. Zara's estimate is \$2,190,200.00.

Based on the entire record, the Commission finds that claimant owned the said items of personal property situated in the two apartments, as well as the automobile, golf equipment, and furs; and that the values on October 14, 1960, the date of loss, were as follows:

Furnishings of Apartment 15-D, including items not individually evaluated.....	\$ 22,609.00
Furnishings of Apartment 15-B, including items not individually evaluated.....	140,409.00
Automobile and golf equipment, depreciated.....	5,720.00
Furs, depreciated.....	11,000.00
	<hr/>
Total.....°.....	\$179,738.00
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Paintings

The portion of the claim for paintings is set forth in claimant's affidavit of May 29, 1967 which accompanied her official claim form. Therein she stated that the paintings had cost \$240,000.00 in 1938, but that their aggregate value in 1960 was about 60% higher. In support thereof, claimant submitted a copy of an appraisal of February 15, 1964 from Joseph Schaefer, an official art curator for the French Government. Mr. Schaefer states that claimant's father, Ferdinand Bernard, had commissioned him to find some exceptional rare paintings; and that in 1938 he acquired for Mr. Bernard about 22-23 paintings each within the price range of 38,000 to 65,000 French francs. His best recollection is that the aggregate amount Mr. Bernard paid for all of the paintings was between 900,000 and 1,000,000 French francs. Mr. Schaefer was able to recall the details of only 14 of the paintings which he described as follows:

1. Fragonard—Landscape with Staffage
2. G. Bellini—The Holy Family
3. Gerard Terborch—Portrait of a Lady
4. Salomon Van Ruysdael—River Landscape
5. Adriaen Brouwer—Peasant-Interior
6. H. Avercamp—Snow-Landscape
7. Meindert Hobbema—Paysage with Mill
8. Jan Van Goyen—Sea Landscape
9. Jan Gossaert—Madonna with Angels
10. Quentyn Massys—Portrait of a Senator
11. Joachim Patinir—Paysage
11. Hans Memling—Angel in Paysage
13. Ed. Manet—Portrait of a Painter
14. Maurice Utrillo—View of Montmartre

In the opinion of this very respectable art expert, the 22-23 paintings "today" (i.e., February 15, 1964) had a value of \$240,000.00.

At this point it is noted that in 1938 the average value of a French franc was \$0.028781 (International Financial Statistics, International Monetary Fund). Therefore, the aggregate price paid for all of the paintings in 1938 was approximately \$26,000.00 to \$28,750.00. On the basis of Mr. Schaefer's appraisal, the aggregate value of all the paintings had increased about 9 times their original cost between 1938 and 1954.

The record includes a detailed inventory of claimant's personal properties in Cuba, including the paintings. It is asserted that this inventory was prepared by an insurance appraiser in Cuba for the purpose of an insurance policy; and that the valuations were made low in order to induce claimant to apply for insurance coverage for her personal properties. Under date of August 30, 1971, claimant submitted her detailed affidavit

of August 28, 1971 by which she amended her claim for the paintings by increasing the amount to \$2,214,000.00. As a preface to that amendment, claimant states that her new valuations are based upon information she obtained from experts. Claimant's list now includes 30 paintings asserted to have been taken by the Government of Cuba.

The evidence also includes a letter of August 31, 1971 from Mr. Louis Zara, setting forth, *inter alia*, his appraisal of the paintings. It appears that Mr. Zara was Editor-in-Chief of a publication known as "Masterpieces" from 1950 to 1951, and a copy of Volume I, published in 1950, has been submitted by claimant. In that publication Louis Zara is shown as Editor-in-Chief, and Herman R. Bollin is indicated as Art Director. Beyond this, no further information is included in the record concerning Mr. Zara's qualifications as an art expert or appraiser. Moreover, it is noted that Mr. Zara's appraisal was not based upon a physical inspection of the paintings, but rather upon a list furnished by claimant.

Mr. Zara begins by attempting to explain away Mr. Schaefer's appraisal, to whom he refers as "the renowned French expert", and it does not appear that he ever spoke with Mr. Schaefer. He states in part as follows:

It would be presumptuous to attempt to revise the estimate Dr. Schaefer gave except for the fact that on the aforementioned date he was a public official, no longer engaged personally in the art market, and was merely, in giving his statement, carrying out a feeling of obligation to his long deceased client. Furthermore . . . he was, with all good will, providing a perfunctory service . . .

After citing examples of certain purchases of paintings made by the Mellon Trust, Mr. Zara then estimates the values of 27 paintings as follows:

1. DEGAS	"Dancing Figure"	\$ 100,000
2. DEGAS	"Bending Dancer"	40,000
3. VAN DYCK	"Portrait of the Marchesa"	200,000
4. DAUMIER	unnamed	75,000
5. TOULOUSE-LAUTREC	unnamed	150,000
6. FRANS HALS	"Portrait of a Girl"	180,000
7. DUFY	"At the Horse Races"	75,000
8. PICASSO	"Fruits in Bowl"	150,000
9. VAN GOGH	"Man in Garden"	200,000
10. DAUMIER	"Parisien Scene"	50,000
11. BRAQUE	"Still Life"	125,000
12. CEZANNE	"Still Life"	150,000
13. GOYA	"Three Noblemen"	250,000
14. FRAGONARD	"Landscape with Staffage"	200,000
15. BELLINI	"Holy Family"	100,000
16. TERBORCH	"Portrait of a Lady"	100,000
17. RUYSDAEL	"River Landscape"	65,000
18. BROUWER	"Peasant Interior"	40,000
19. VAN AVERCAMP	I have no opinion here and leave estimate at	45,000
20. HOBBEEMA	"Paysage With Mill"	150,000
21. VAN GOYEN	No special opinion here and leave estimate at	50,000
22. MASSYS	"Portrait of a Senator"	80,000
23. PATINIR	No opinion; leave estimate at	36,000
24. MEMLING	"Angel in Paysage"	100,000

25. GOSSAERT	"Madonna with Angels"	35,000
26. MANET	"Portrait of a Painter"— leave estimate at	200,000
27. UTRILLO	"View of Montmartre"— leave estimate at	85,000
	Estimate total value of above	<u>\$3,031,000</u>

The following listing includes claimant's amended valuations, using numbers keyed to those employed by Mr. Zara, shown above, except where otherwise indicated, along with appropriate remarks in parenthesis:

1.	(The insurance inventory value for this one is \$800.00)	\$ 80,000.00
2.	(The insurance inventory lists this one as "Painting", artist not shown, valued at \$120.00)	25,000.00
3.	(The insurance inventory lists this one as "Antique Painting: woman figure" by Anthony Van Dyck, valued at \$7,000.00)	150,000.00
4.	(The insurance inventory lists this one as "Long Painting modern", artist not shown, valued at \$100.00)	50,000.00
	(These two are not included in Mr. Zara's list. The insurance inventory lists them at "2 Paintings: Hunter" valued at \$500.00)	20,000.00
5.	(The insurance inventory lists this one as "Woman's figure with lamp above" by Henri de Toulouse, valued at \$3,000.00)	125,000.00
6.	(Claimant states that this one was placed in a space made especially for it between the shelves of the floor-to-ceiling, wall-to-wall bookshelves. In her affidavit of November 30, 1971, claimant states that this is one of the "3 Pictures" appearing in the insurance inventory at \$120.00. Artist is not shown)	120,000.00
7.	(The insurance inventory lists this one as "Painting: Horse race by Raul Dufey Epsom", valued at \$6,000.00)	60,000.00
8.	(The insurance inventory lists this one as "Painting" by Picasso, valued at \$6,000.00)	130,000.00
9.	(In her affidavit of November 30, 1971, claimant states this is one of "3 Pictures" appearing in the insurance inventory as \$120.00, artist not shown)	100,000.00
10.	(The insurance inventory lists this one as "Parisian scene", valued at \$250.00, artist not shown)	30,000.00
11.	(The insurance inventory lists this one as "Large painting, ultra modern", valued at \$230.00, artist not shown)	80,000.00
12.	(The insurance inventory lists this one as "Large painting, still life", valued at \$260.00, artist not shown)	100,000.00
13.	(The insurance inventory lists this one as "Painting—three figures with lamp above", valued at \$5,000.00)	150,000.00

(The following 14 paintings are those appraised by Mr. Schaefer.)

14.		120,000.00
15.		70,000.00
16.		75,000.00
	(The above items—14, 15 and 16—are not included in the insurance inventory)	
17.	(The insurance inventory lists this one as "Painting, Sea scene", valued at \$120.00)	45,000.00
18.	(In her affidavit of November 30, 1971, claimant states this is one of "3 Pictures" appearing in the insurance inventory as \$120.00. Artist is not shown)	30,000.00
19.	(This one is not included in the insurance inventory)	45,000.00
20.	(The insurance inventory lists this one as "Large painting", valued at \$280.00, artist not shown)	100,000.00
21.		50,000.00
22.		50,000.00
23.		36,000.00
24.		85,000.00
25.		3,000.00
	(The above items—21 through 25—are not included in the insurance inventory)	
26.	(The insurance inventory lists this one as "Modern painting", valued at \$150.00, artist not shown)	200,000.00
27.	(The insurance inventory lists this one as "Painting by Damon", value not indicated. In her affidavit of November 30, 1971, claimant states that "It is actually a painting by Daumier. The insurance appraiser made an error")	85,000.00
		\$2,214,000.00

On the basis of the entire record, the Commission finds the evidence insufficient to support claimant's assertions either as to the number and identities of the paintings or as to the values thereof on the date of loss. The Commission finds that the valuation most appropriate to the property and equitable to the claimant is the appraisal made by Mr. Schaefer, an art expert who had selected them for purchase by claimant's father, and whose opinion was given *ante litam motam*. Accordingly, the Commission finds that the aggregate value of the paintings on October 14, 1960, the date of loss, was \$240,000.00.

JEWELRY

The record includes an affidavit by claimant's Cuban attorney who states that he represented her from 1955 until he left Cuba on October 25, 1960. He states that the jewels which claimant's father had owned were received from France toward the end of 1956 and he at that time checked them against the inventory and then arranged to place them in a safe deposit box of claimant. At claimant's request he states that he sold about one-half to a manager of a jewelry store in Havana for \$352,000.00. He also enclosed a list of the jewelry and platinum jewelry box which had been shipped from France, with their appraised value of noted the items

that were sold. The aggregate value of the original list is shown as \$691,000.00, and the total value of the items indicated on this list as sold is \$316,000.00

The record also includes an appraisal of the jewelry made in Paris in January, 1951 at claimant's request, a list of what appears to be the same jewelry as shipped exclusive of the platinum jewelry box, and copies of correspondence related thereto. The appraised total is shown as 215,300 pound sterling and in a letter to claimant dated January 27, 1964 the appraiser states that they are worth twice the price they were worth in 1950.

In addition there is in the record the aforementioned affidavits of claimant and of the French citizen who shipped the paintings and jewelry to Cuba. The latter affidavit includes a list of the jewelry. In claimant's affidavit of May 29, 1967 she states that she had left the jewelry subject of this claim with her Cuban attorney at the airport when she was leaving Cuba because she was advised that she would be physically searched and that these valuables would be confiscated.

In the aforementioned affidavit of claimant's Cuban attorney he states that Cuban officials opened the safe in his office about 2 weeks after claimant left Cuba in September 1960, and seized claimant's jewels worth \$300,000.00, her \$60,000.00 in cash, and stocks, documents and cash which his clients left in his custody. Thereafter he says he went into hiding with his family and escaped by plane on October 25, 1960.

Based on the entire record the Commission finds that claimant owned the jewelry subject of this claim, that it was taken by the Government of Cuba on September 15, 1960, and that its aggregate value including the platinum jewelry case was \$375,000.00.

CASH LEFT WITH ATTORNEY

Claimant in her affidavit states that she left \$40,000.00 with her Cuban attorney and an additional \$20,000.00 in cash to be made available to her old housekeeper and her husband for maintenance and taxes on the apartment. She therefore asserts a claim in the amount of \$60,000.00 for this loss. The aforementioned affidavit of her Cuban attorney states that when claimant left Cuba she gave him in trust for safekeeping \$40,000.00 in United States currency and an additional \$20,000.00 to meet payments required on her apartments and for other purposes designated by her, as well as the jewelry referred to above.

Based on all the evidence of record the Commission finds that claimant owned \$60,000.00 in cash left in custody with her Cuban attorney and that it was taken by the Government of Cuba on September 15, 1960 at the same time as the jewelry was taken.

CASH IN SAFE IN APARTMENT

Claimant asserts the loss of \$21,325.00 in United States currency which she had placed in her apartment safe. In support claimant has submitted a letter from an individual who states that she was in the apartment in the evening before claimant's departure and that among other things she saw claimant leave about \$21,500.00 in United States currency in claimant's safe.

Based on the evidence of record the Commission finds that claimant suffered a loss of \$21,325.00 in United States currency which was taken

from her safe on October 14, 1960 the date on which the Government of Cuba took her apartments.

CUBAN CURRENCY

A portion of this claim is based on the loss of 11,750 Cuban pesos which claimant has submitted. Claimant left Cuba in September 1960, and the currency was brought to her shortly thereafter. Subsequently, on August 4, 1961 there was published in the Cuban Official Gazette, Law 963 which ordered a currency exchange to be carried out on August 6 and 7, 1961. The law provided that after August 7, 1961, old currency was to be null and of no value. Article XI of Law 963 declared that all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State, was null and of no legal force. Accordingly, the Commission holds that claimant's Cuban peso notes became automatically null and of no legal effect on August 4, 1961, the date of the promulgation of Law 963 (see *Claim of Betty G. Boyle*, Claim No. CU-3473, 1968 FCSC Ann. Rep. 81).

In view of the foregoing the Commission finds that claimant suffered a loss of \$11,750.00 (the peso being on a par with the United States dollar) on August 4, 1961 based on this portion of her claim.

STOCK INTERESTS IN CUBAN CORPORATIONS

Based on the entire record including stock certificates in the Cuban corporations concerned, the Commission finds that, pursuant to the Community Property Law of Cuba, claimant owned a $\frac{1}{2}$ interest in 28,560 shares of Minimax Super-Mercados, S.A. (Minimax); 37 shares of common and 4,727 shares of preferred stock of Inversiones Guarina, S.A. (Guarina); 85 shares of common and 2,724 shares of preferred stock of Fibraglass Distributors, Inc. (Fibra); 8,137 shares of common and 100 shares of preferred stock of Cuban Independent Trading Corp. (Cuban); and 276 shares of common and 729 shares of preferred stock of Colon Independent Trading Corp. (Colon).

In our decisions entitled *Claim of Libby Holman Reynolds* (Claim No. CU-1384); *Claim of Helen Brandon and Claudia Muriel Deske* (Claim No. CU-2175); *Claim of Benjamin Kovner* (Claim No. CU-1015); and *Claim of Jack Clareman and Benet Polikoff, Executors of the Estate of Montgomery Clift, Deceased* (Claim No. CU-1385), which we incorporate herein by reference, we held that these companies were intervened or otherwise taken by the Government of Cuba on September 1, 1960; and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the methods used in determining the value of the Minimax stock as \$1.0023 per share; the value of Fibra common stock as \$5.4913 per share and preferred as \$1.00 per share; the value of Cuban common at \$.600476 per share and Cuban preferred as \$100.00 per share; and the value of Colon common as \$4.0418 per share and preferred at \$118.00 per share.

On the basis of evidence of record in the instant case, it is found that claimant came within the terms of the *Reynolds*, *Brandon*, *Kovner*, and *Clift* decisions, and that she suffered a loss in the aggregate amount of \$66,920.03 for the above-described stock interests within the meaning of Title V of the Act.

With regard to the portion of this claim based on the ownership of a

stock interest in Guarina, the record contains no evidence regarding its nationalization or other taking and no balance sheet or other financial statements from which the value of Guarina can be ascertained. Moreover, counsel states claimant is unable to secure any financial statements. Accordingly, the Commission is constrained to and does deny this portion of the claim for lack of proof.

Claimant also claims the loss of a stock interest in Sedanita Textil, S.A. (Sedanita) and in Inversiones Lenkest S.A. (Lenkest). In regard to Sedanita she submitted a certificate in the name of her Cuban attorney and has not explained her interest therein. In regard to Lenkest the record discloses that it was formed to purchase real property in Cuba and to develop it for shopping centers. There is also of record a letter dated June 23, 1959 to its stockholders in which it is stated that the total assets of the corporation consisted of a bank deposit in the Royal Bank of Canada in the amount of \$100,000.00, that \$48,970.58 of this sum had been transferred to the bank's New York branch, that this sum was being distributed by check to the shareholders proportionately, and that the remaining funds (\$51,029.42) could not be transferred from Cuba under present Cuban laws.

Claimant states that at the time of the Cuban Government confiscation Lenkest owned 9 options to purchase land in areas in Havana where Minimax had contracted to purchase land to build stores. In the claim form claimant states that she owned 40 shares of Lenkest but the record contains no share certificates or evidence of the number of shares outstanding. In view of the foregoing the portion of the claim based on the loss of a stock interest in Sedanita and in Lenkest is denied for lack of proof.

RECAPITULATION

Claimant's losses are summarized as follows:

<i>Item</i>	<i>Date of Loss</i>	<i>Amount</i>
Apartments	October 14, 1960	\$ 95,170.00
Household furnishings, etc.	October 14, 1960	179,738.00
Paintings	October 14, 1960	240,000.00
Jewelry	September 15, 1960	375,000.00
Cash taken from attorney's office	September 15, 1960	60,000.00
Cash in apartment safe	October 14, 1960	21,325.00
Cuban currency	August 4, 1961	11,750.00
Stock interests	September 1, 1960	66,920.03
	Total	\$1,049,903.03

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU—0644) and in the instant claim it is so ordered as follows :

FROM	ON
September 1, 1960	\$ 66,920.03
September 15, 1960	435,000.00
October 14, 1960	536,233.00
August 4, 1961	11,750.00
	<hr/>
	\$1,049,903.03
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CERTIFICATION OF LOSS

The Commission certifies that OLGA LENGYEL suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Forty-nine Thousand Nine Hundred Three Dollars and Three Cents (\$1,049,903.03) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., April 28, 1972.

IN THE MATTER OF THE CLAIM OF THE GOODYEAR TIRE & RUBBER COMPANY

Claim No. CU-0887—Decision No. CU-887

The nationalization of a Cuban corporation wholly owned by an American entity does not justify a Certification of Loss under Title V of the Act, if the Cuban entity was insolvent on the date of loss.

PROPOSED DECISION *

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$6,282,053.85 was presented by THE GOODYEAR TIRE & RUBBER COMPANY based upon debts and loss resulting from the intervention of Goodyear de Cuba, S.A.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened,

* This decision was entered as the Commission's Final Decision on February 12, 1965.

or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Ohio and that at all times between August 1, 1960 and presentation of this claim on December 1, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the *meaning* of Section 502(1) (B) of the Act.

Claimant states that 63,575 of its 64,116 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that 541 stockholders were residents of foreign countries and assumed to be citizens of those countries.

An officer of THE GOODYEAR TIRE & RUBBER COMPANY has certified, and the Commission finds that claimant was the holder of 980 shares of the 1,000 outstanding shares of Goodyear de Cuba, S.A. and was the beneficial owner of the remaining 20 shares of stock under a Declaration of Trust signed by Edwin J. Thomas on March 26, 1959, and that Goodyear de Cuba, S.A. was organized under the laws of the Republic of Cuba on January 1, 1928.

On November 25, 1959, the Government of Cuba published in its Official Gazette Law No. 647 which authorized the Minister of Labor, in such cases as he deemed it necessary, to order the intervention of enterprises or working centers. Law 843, published in the Official Gazette of July 6, 1960, gave the Labor Ministry unilateral authority to extend the period of its intervention of any establishment beyond the six months period provided in Law 647. Resolution 19045 of August 30, 1960, of the Ministry of Labor, provided for the intervention of Goodyear de Cuba, S.A. and appointed an intervenor who delivered the Resolution to the firm on September 1, 1960. Thereafter, the Company was nationalized by Resolution No. 3 of the President of the Republic of Cuba published in the Cuban Official Gazette on October 24, 1960.

Based on the foregoing the Commission finds that claimant sustained a loss, within the *meaning* of Title V of the Act on September 1, 1960, when Goodyear de Cuba, S.A. was *intervened* by the Government of Cuba.

In making determinations with respect to the validity and amount of claims and value of properties, rights and interests taken, the Act provides in Section 503(a) that the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss in the amount of \$6,282,053.85, \$4,973,915.26 representing the amount due and owing on account from Goodyear de Cuba, S.A., \$144,413.85 the amount due on a sight draft payable by the

Cuban enterprise, and \$1,163,724.74 being the value claimed for the stock of Goodyear de Cuba, S.A. as of September 1, 1960.

In support of the valuations claimed, claimant has submitted balance sheets of the Cuban firm for December 31, 1959 and August 30, 1960, a statement of assets of Goodyear de Cuba, S. A. as of September 1, 1960 amounting to \$6,473,770.00, a schedule of liabilities as of September 1, 1960, the record of account between claimant and the Cuban company, a listing of the physical assets of the Cuban company with the purchase prices and book values, and a photocopy of an insurance binder on buildings, machinery, fixtures and equipment.

The balance sheet for Goodyear de Cuba as of August 31, 1960 reflects the following:

ASSETS

Current Assets

Cash

Cash in Bank.....	\$ 834,521.00	
Cash on Hand.....	2,300.00	\$ 836,821.00

Receivables

Accounts Receivable.....	1,464,233.00	
Bills Receivable.....	225,562.00	
Suspense Account.....	148,548.00	
Less Res. for Cash Disc.....	4,571.00	
Less Res. for Contr Rebate.....	36,901.00	
Less Res. for Commissions.....	31,262.00	
Less Res. for Bad Debts.....	364,377.00	
Net Total Receivables.....		1,401,232.00

Advances to Employees.....	5,369.00	
Guarantee Deposits.....	3,154.00	8,523.00

Inventories

Duty, Frt. and Clearance Chg.....	24,885.00	
Merchandise on Hand.....	546,368.00	
Merchandise in Transit.....	1,285.00	
Prepaid Duty etc Raw Mat.....	9,272.00	
Raw Materials.....	198,973.00	
Raw Materials in Transit.....	63,773.00	
Total Inventories.....		844,556.00
Total Current Assets.....		\$3,091,132.00

<i>Securities</i>		\$ 4.00
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Fixed Assets

Land and Appurtenances.....	\$ 120,179.00	
Buildings.....	604,904.00	
Machinery and Equipment.....	2,347,037.00	
Furniture and Fixtures.....	59,455.00	
Motor Cars and Trucks.....	52,042.00	
Less Res. for Depreciation.....	1,169,432.00	
Total Fixed Assets.....		\$2,014,185.00

Prepaid and Deferred Chgs.

Insurance.....	\$ 370.00	
Taxes.....	385.00	
Misc.....	1,979.00	
Total Prepaid and Def. Chgs.....		2,734.00

TOTAL ASSETS		\$5,108,055.00
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LIABILITIES

Current Liabilities

Accounts Payable	\$ 39,867.00	
Res. for Inc. and Prof. Tax	7,131.00	
<i>Miscellaneous Reserves</i>		
Taxes	6,638.00	
Audit and Legal	2,085.00	
Overseas Travel	11,440.00	
Social Laws Liabilities	2,731.00	
Other Reserves	80,514.00	
Total Current Liabilities		\$ 150,406.00

Other Liabilities

Goodyear Tire & Rubber Co.	\$5,007,890.00	
Goodyear Tyre & Rubber Co. Ltd.	(152.00)	
Goodyear S.A. Luxemburgo	145.00	
Goodyear de Brasil	2,482.00	
Goodyear T & R Co. Akron		
Draft Acct. 144,874.00		
Prov. Dep. 140,495.00	4,352.00	
Goodyear Export, S.A.		
Draft Acct. 38,250.00		
Prov. Dep. 40,621.00	(2,371.00)	
Total Liabilities		\$5,012,346.00

CAPITAL

Common Stock Authorized	\$ 100,000.00	
		\$ 100,000.00

SURPLUS

Balance at End of Prev. Year (106,396.00)		
Profit and Loss Year to Date (48,301.00)		
Net Surplus		(154,697.00)
TOTAL LIABILITIES		\$5,108,055.00

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owners' equity, or net worth. The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, the calculation of net worth is as follows:

Total Assets	\$5,108,055.00
Less Contractual Liabilities	5,162,752.00
Net Worth Minus—	\$ 54,697.00

Claimant has submitted a statement of assets for Goodyear de Cuba for September 1, 1960 in the amount of \$6,473,770.00. This statement does not consider any deductions for reserves or depreciation of buildings, machinery, equipment, and fixtures but uses an insured value for these items as set forth on an undated photocopy of an insurance binder. The statement does

consider a depreciation of 15% per annum on motor vehicles, a different rate than used for the balance sheet. The claimant further submits an adjusted statement concerning the amount due from Goodyear de Cuba on September 1, 1960 indicating a debt of \$4,973,915.26 instead of the \$5,007,890.00 set forth on the balance sheet.

The Commission has considered all of the evidence of record and has determined that the increased value for motor vehicles and the adjusted debt of \$4,973,915.26 might be substituted in the balance sheet but such changes would not be sufficient to reflect a net surplus for the Cuban enterprise. The Commission concludes that claimant has not sustained a loss based upon the net worth of Goodyear de Cuba due to the intervention by the Government of Cuba.

However, the Commission does find that Goodyear de Cuba was indebted to claimant in the amount of \$4,973,915.26 plus the amount of \$144,847.00 for a draft which had not been paid to claimant although the balance sheet indicates a provisional payment of \$140,000.00, and concludes that claimant sustained a loss in the total amount of \$5,118,762.26 under Section 502(3) of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Cheaims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the *Claim of Lisle Corporation*, FCSC Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from September 1, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE GOODYEAR TIRE & RUBBER COMPANY sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Million One Hundred Eighteen Thousand Seven Hundred Sixty-Two Dollars and Twenty-Six Cents (\$5,118,762.26), with interest thereon at 6% per annum from September 1, 1960 to the date of settlement.

Dated at Washington, D. C. January 10th 1968.

IN THE MATTER OF THE CLAIM OF TWENTIETH CENTURY-FOX FILM CORPORATION, ET AL.

Claim No. CU-2114—Decision No. CU-6050

The value of films and film products is best determined by considering costs of manufacture and shipment as well as depreciation incident to shipment, exhibition and storage of the films and film products in Cuba.

PROPOSED DECISION*

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of

* This decision was entered as the Commission's Final Decision on March 15, 1971.

\$873,001.57, was presented by TWENTIETH CENTURY-FOX FILM CORPORATION, TWENTIETH CENTURY-FOX INTERNATIONAL CORPORATION and TWENTIETH CENTURY-FOX INTER-AMERICA, INC., and is based upon the asserted loss of film prints, anticipated film rental, reimbursement for loss of property assigned by a former branch manager in Cuba, and the loss of the assets of a Cuban corporation known as Peliculas Fox de Cuba, S.A.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-143k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Re., 45 C.F.R. §531.6(d) (1970).)

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The evidence of record discloses that TWENTIETH CENTURY-FOX FILM CORPORATION, a Delaware corporation, referred to hereinafter as FOX FILMS, owned all of the outstanding stock of TWENTIETH CENTURY-FOX INTERNATIONAL CORPORATION, a New York corporation, hereafter referred to as INTERNATIONAL, and of TWENTIETH

CENTURY-FOX INTER-AMERICA, INC., a New York corporation, hereafter referred to as INTER-AMERICA. Further, the evidence discloses that INTERNATIONAL owned all of the stock of Peliculas Fox de Cuba, S.A., a Cuban corporation formed in 1922, referred to hereinafter as Fox-Cuba.

A corporate official of FOX FILMS, has certified that at all times from the asserted date of loss in May 1961 to the date of filing this claim in April 1967 more than 50% of its outstanding capital stock was owned by nationals of the United States. Further, the official stated that at all times during the aforesaid period more than 90% of the outstanding capital stock of all classes or of any beneficial interest in FOX FILMS has been owned directly or indirectly by nationals of the United States. The Commission finds that FOX FILMS and the other claimants herein are nationals of the United States within the meaning of Section 502(1) (B) of the Act.

For many years prior to the asserted date of loss of the property subject of this claim, FOX FILMS produced and furnished film product to INTERNATIONAL for distribution of Fox product throughout the world, and to INTER-AMERICA for distribution in areas near the United States. INTER-AMERICA utilized the services of Fox-Cuba, with whom distribution agreements were executed. Thereafter, the film product was distributed throughout Cuba as the subject of contracts between Fox-Cuba and the Cuban theatre owners or exhibitors and the product was exhibited to the public in various Cuban theatres in that territory whereby film rentals were earned by the Cuban subsidiary and the claimants.

FOX FILMS has submitted, among other things, company records showing shipment of product to Cuba and other areas and an inventory of film product in Cuba, assertedly taken by the Government of Cuba from Fox-Cuba. The inventory includes the various types of film prints which were the subject of distribution and exhibition contracts and included Fox product or other prints to which rights had been acquired by claimants herein. The inventory included 744 prints, such as 35mm feature presentations and short subjects. Based on the aforesaid evidence of record, as well as affidavits and company records submitted by officials of the claimants, the Commission finds that FOX FILMS was at all times pertinent to this claim the owner of the said film product, further itemized hereafter.

The Commission finds that Fox-Cuba was taken by the Government of Cuba pursuant to Resolution 2868, published by Cuban authorities in the Official Gazette on May 10, 1961, and the Commission further finds that the film inventory of FOX FILMS was taken at that time.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The prints shipped to Cuba by INTER-AMERICA were made from negatives of various productions previously produced by FOX FILMS or

other producers, domestic or foreign, from whom FOX FILMS or INTER-AMERICA had secured rights to the prints in question. These prints, apparently shipped to Cuba primarily in the period from 1953 to 1960, had been exhibited or were to be exhibited in various areas or exhibition zones in Havana, other cities in Cuba, or areas throughout the smaller towns and hamlets. Thus, the product was in various stages of the depletion cycle, applicable to such product, at the time of loss, with some prints apparently to be released or in active use in the aforesaid exhibition zones, others in a re-run category, while others were to be junked as no longer **having** utility for exhibition purposes.

Officials of the claimants have submitted their affidavits and statements, with cost figures from Technicolor, Pathe and other manufacturers of the prints, indicating the cost of manufacturing film product in the years immediately prior to loss, including cost per foot of black and white prints, or those in color, along with incidental charges, such as shipping or custom expenses. Claimants have computed a value of the prints on a replacement or cost when new basis, with incidental charges added thereto; and the total value of the product in Cuba was asserted to be in the amount of \$345,588.00 at the time of loss.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the most appropriate basis for evaluating the film product at the time of loss is to consider factors relating to cost of manufacture and shipment, as well as depreciation incident to the shipment, exhibition and storage of the product in Cuba. The Commission has considered these factors, including those relating to depreciation of the film products, and finds that the reasonable value of the prints is as follows:

35mm Features

Black and White, 239 prints, at \$150.00 per print \$ 35,850.00

Color, 431 prints, at \$300.00 per print 129,300.00

Color Shorts

Color shorts, 74 prints, at \$50.00 per print 3,700.00

Total..... \$168,850.00

The Commission finds that FOX FILMS suffered a loss in the amount of \$168,850.00 within the meaning of Title V of the Act when the Government of Cuba seized the film product on May 10, 1961.

As indicated above, INTERNATIONAL also suffered a loss when the Government of Cuba seized its wholly owned subsidiary, Fox-Cuba, on May 10, 1961. Since Fox-Cuba was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1) (B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of its ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

INTERNATIONAL has submitted evidence pertaining to the value of the Cuban subsidiary, including affidavits, correspondence and a certified balance sheet, dated April 1, 1961, which was prepared immediately before the date of loss; trial balances, notes thereto and profit and loss statements. Claimants have also submitted supplementary information with respect to the assets and liabilities of Fox-Cuba, including banking statements, state-

ments of accounts due and payable, showing not only assets but certain debts payable to a claimant herein by the Cuban subsidiary at the time of loss, as more particularly discussed hereafter.

The balance sheet of Fox-Cuba, dated April 1, 1961, reflects the following (the peso being on a par with the dollar) :

ASSETS	
<i>Cash</i>	
Cash in Bank No. 1	\$197,548.69
Cash in Bank No. 2	9,612.15
Cash in Bank No. 3	8,335.17
Petty Cash.....	200.00
	<hr/>
Total Cash	\$215,696.01
<i>Accounts Receivable</i>	
Exhibitors	\$107,760.03
Others	29.55
	<hr/>
Total Accounts Receivable.....	107,789.58
<i>Inventories</i>	11,866.24
<i>Fixed Assets</i>	
Land	1,600.00
Buildings.....	39,200.00
Less—Reserve for Depreciation .	— 588.00
	<hr/>
Furniture Equipment, etc.....	24,659.24
Less—Reserve for Depreciation .	— 21,164.39
	<hr/>
Total Fixed Assets.....	43,706.85
<i>Prepaid Expenses</i>	
Court Stamps.....	10.00
Unexpired Insurance.....	640.62
Advances.....	80.00
Deposits for Rent, Light, etc	530.00
Document Stamps.....	50.00
Postage Stamps	80.00
	<hr/>
Total Prepaid Expenses	1,390.62
Total Assets.....	\$380,449.30
 LIABILITIES AND CAPITAL 	
<i>Accounts Payable and Accrued Liabilities</i>	
Accounts Payable.....	\$ 456.74
Accrued Taxes—Local	5,332.85
Accrued Taxes—Inter-America.....	3,224.27
	<hr/>
Total Accounts Payable and Accrued Liabilities.....	9,013.86
<i>Fixed Liabilities (At Long Term)</i>	
Property to be Paid.....	38,760.00
<i>Advance Payments from Exhibitors</i>	
Credit Balances	792.30

Financial Accounts

Twentieth Century-Fox Inter-America, Inc.....	286,843.57
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Capital Stock

Authorized 500 Shares at \$50.00	
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Issued 500 Shares at \$50.00	25,000.00
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Surplus or Deficit Account

Profit or Loss Prior Years.....	\$ 14,070.47	
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Profit or Loss Current Year.....	5,969.10	20,039.57
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Total Liabilities and Capital.....	\$380,449.30
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The Commission finds that the above balance sheet appropriately reflects the financial status of the Cuban firm on or about May 10, 1961, the date of loss. Since this is a Cuban enterprise, it is necessary to establish the net worth of this subsidiary and the Commission finds that Fox-Cuba had a net worth of \$45,039.57 on May 10, 1961, the date of loss. The Commission also finds that INTERNATIONAL suffered a loss in this amount within the meaning of Title V of the Act.

According to the balance sheet, there was an intercompany indebtedness of the Cuban subsidiary payable to INTER-AMERICA, consisting of an account in the amount of \$286,843.57. Accordingly, the Commission finds that claimant INTER-AMERICA suffered a loss in the amount of \$286,843.57 within the scope of Title V of the Act as a result of the taking of the Cuban corporation by the Government of Cuba on May 10, 1961. (See *Claim of Kramer, Marx, Greenlee and Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Claimant INTER-AMERICA has submitted an assignment dated April 1, 1961, executed by Thomas E. Sibert, former branch manager of the claimant in Cuba, whereby Mr. Sibert assigned to claimant all of his property which he left in Cuba at or about the time that the Cuban subsidiary was taken by the Government of Cuba. The evidence establishes that Mr. Sibert left Cuba at the time of loss of the Cuban firm and the property, having a value of \$10,000.00, was taken by the Government of Cuba after he left Cuba. In the absence of evidence to the contrary, the Commission finds that the property formerly owned by this employee was taken by Cuba on June 15, 1961, and that claimant INTER-AMERICA as the assignee of the property, suffered the loss in the total amount of \$10,000.00. (See *Claim of General Motors Corporation and General Motors Acceptance Corporation*, Claim No. CU-3088.)

Product owned by FOX FILMS or others was transferred to INTERNATIONAL, INTER-AMERICA and Fox-Cuba, pursuant to agreements between the parties, for distribution of the product throughout the world, including Cuba. The agreements for exhibition of the product in Cuba were apparently made on "block booking" arrangements with the Cuban exhibitors whereby contracts were made for the film products several weeks in advance. Such agreements assertedly provide for the booking and exhibition by the theatre owners of several feature presentations, with fillers or short subjects, which were to be furnished by the distributors.

The claimants have asserted claim for loss of prospective earnings or film rental income which might have been realized by claimants had not the Government of Cuba seized their property in May 1961. FOX FILMS contends that the prints, aside from the physical attributes, as discussed above,

contained a series of images on the film which not only were unique in nature but were the primary things of value as the subject of the contracts between INTER-AMERICA and the subsidiary, Fox Cuba, and those contracts executed between Fox-Cuba and the exhibitors or theatre owners in Cuba.

The Commission has carefully considered the claim asserted for loss of anticipated film rental income had not the Government of Cuba intervened. However, claims based on the loss of prospective earnings are generally not allowed under international law. Edwin M. Borchard discusses this matter in his recognized treatise entitled "Diplomatic Protection of Citizens Abroad." In Section 172 thereof, Mr. Borchard cites the historic "Alabama Arbitration," and goes on to say:

"This award (in the *Aheabama* case), including the finding that 'prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies,' has been regarded as a reliable precedent by numerous other arbitral tribunals, which have disallowed indirect claims based upon loss of anticipated profits, loss of credit, and similarly consequential elements of loss."

"Acts of Congress authorizing domestic commissions to distribute international awards have followed the general rule excluding anticipated profits and indirect losses from consideration as elements of damage.

Domestic commissions have reached the same conclusion without specific direction from Congress."

The Commission finds that the portion of the instant claim based on prospective film rentals for the period beginning May 10, 1961, is not compensable under the Act. The profits or earnings of the Cuban enterprise, if any, which may have been realized during the period in question did not belong to the claimants since their title in and to the enterprise and film product was extinguished when the Government of Cuba intervened. However, claimants are being allowed interest on the value of the property taken by the Cuban Government, as discussed hereafter. Accordingly, the portion of the claim based on film rental or profits for the period following intervention on May 10, 1961, is denied for the reason that the record contains no evidence to show that any profits belonging to the claimants were taken by the Government of Cuba. (See *Claim of United Shoe Machinery Corporation*, Claim No. SOV-40,353, 10 FCSC Semiann. Rep. at 238; *Claim of Aris Gloves, Inc.*, Claim No. CZ-1170, 17 FCSC Semiann. Rep. 239 [July-Dec. 1962]; and *Claim of Metro-Goldwyn-Mayer, Inc.*, Claim No. CU-2225.)

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered:

<i>From</i>	<i>On</i>
TWENTIETH CENTURY-FOX FILM CORPORATION	
May 10, 1961.....	\$168,850.00
TWENTIETH CENTURY-FOX INTERNATIONAL CORPORATION	
May 10, 1961.....	45,039.57
TWENTIETH CENTURY-FOX INTER-AMERICA, INC.	
May 10, 1961.....	286,843.57
June 15, 1961 --	10,000.00

CERTIFICATIONS OF LOSS

The Commission certifies that TWENTIETH CENTURY-FOX FILM CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixty-Eight Thousand Eight Hundred Fifty Dollars (\$168,850.00) with interest thereon at 6% per annum from May 10, 1961 to the date of settlement;

The Commission certifies that TWENTIETH CENTURY-FOX INTERNATIONAL CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Five Thousand Thirty-Nine Dollars and Fifty-Five Cents (\$45,039.55) with interest thereon at 6% per annum from May 10, 1961 to the date of settlement; and

The Commission certifies that TWENTIETH CENTURY-FOX INTER-AMERICA, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Ninety-Six Thousand Eight Hundred Forty-Three Dollars and Fifty-Seven Cents (\$296,843.57) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., February 3, 1971

IN THE MATTER OF THE CLAIM OF MAC GACHE

Claim No. CU-0050—Decision No. CU-3908

The Commission took administrative notice that land and improved real property values increased substantially between 1954, and 1959 when Castro came into power.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$2,925,251.16, was presented by MAC GACHE, based upon the asserted loss of certain real and personal property in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1946), 22 U.S.C. §-1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act

* This decision was entered as the Commission's Final Decision on October 28, 1969.

Since all of the corporations, mentioned above, were organized either under the laws of Cuba or Panama, none qualifies as a corporate "national of the United States" defined under Section 502(1) (B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those set forth hereafter.

HOTEL KAWAMA

The record shows that claimant acquired the hotel in 1954 at a cost of \$400,000.00 when it was subject to a mortgage of \$200,000.00. Subsequently, claimant improved the property by adding new cottages and improving the existing structures, at a further cost of \$150,000.00. Extracts from claimant's books and records, certified to be accurate by claimant's accountant, disclose that the mortgage was fully satisfied so that claimant owned the hotel free of any liens or encumbrances, including all the furniture, equipment and other personalty contained in the hotel.

Claimant states that he had received an offer of \$1,500,000.00 for his hotel, but had rejected it as inadequate. His statement and claim based on that amount is supported in the record by a single nondetailed letter made by the former President of the Real Estate Brokers Association of Havana. Claimant had failed, however, to furnish balance sheets or other supporting data and has failed to furnish a detailed breakdown of the real and personal property comprising the hotel. He has indicated in his reply of August 19, 1969 that no other evidence is available and that he would like the claim determined "on the basis of the material you now have in your file."

The Commission is well aware of the difficulty of securing certain types of evidence left in Cuba when claimants fled that country. Nevertheless, it must have reasonable evidence upon which to base an award. In the instant case it takes administrative notice of the fact that land values and tourist hotels did rise substantially in value after 1954 and until shortly prior to the take over by Castro. From this record, including the offer to purchase and the brochures available on the hotel, and considering the

excellent location of the subject property and the inflationary rise of such hotels, it concludes and holds that the Kawama property had a net value of \$1,500,000.00 as claimed.

DEBT FROM HOTEL KAWAMA OPERATING COMPANY, S.A.

It is asserted by claimant that his wholly-owned Kawama Operating Company, S.A., a Cuban corporation, owed him a debt of \$225,251.16.

Claimant's statements to the Department of State contain no reference to any such debt, nor is this asserted debt included in any of the communications from claimant's former Cuban attorney. In response to suggestions from the Commission for supporting evidence in this respect, claimant submitted an affidavit from his accountant accompanied by certified extracts from claimant's books and records. An examination of the extracts discloses that claimant paid debts of his Cuban corporation, which had leased his Hotel Kawama, in the amounts of \$70,000.00 on one occasion and \$25,000.00 on another, for a total of \$95,000.00.

On the basis of the entire record and in the absence of more persuasive evidence, the Commission finds that the Hotel Kawama Operating Company, S.A., which apparently was formed merely to operate the hotel through a corporation, was intervened by Cuba on October 15, 1960 when the hotel itself was intervened. The Commission further finds that on October 15, 1960, the date of loss, the Cuban corporation owed claimant a debt in the amount of \$95,000.00, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act. (See *Claim of Kramer, Marx, Greenlee and Backus*. Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

IMMOBILIARIA GUSTILEANA, S.A.

As indicated above, claimant owned a 25% stock interest in Gustileana. The record shows that this Cuban corporation owned no assets other than certain real property in Vedado, a suburb of Havana.

Claimant now asserts that the total value of Gustileana was \$1,400,000.00 making his 25% stock loss \$350,000.00. The record shows that Gustileana purchased the real property on November 6, 1957 at a total cost of \$879,000.00 which included an encumbrance of \$439,000.00 which was still unpaid on June 10, 1960, the date of loss. An affidavit in the file dated January 28, 1969, secured from Cuban sources, shows the appraised value of this property was \$879,000.00. Claimant's original claim of June 15, 1965 asserts that his one-fourth interest cost him \$223,500.00 and was worth \$350,000.00 when confiscated. The property owned by Gustileana evidently consisted of several assembled parcels of land in the Vedado littoral and had a substantial value. Unfortunately, however, as in the case of the Kawama Hotel, there is no detailed or corroborative evidence to support the claimed value. Further, there is no long passage of time in which the Commission could find the property would have substantially increased in value. Here the property was acquired on November 6, 1957 and was confiscated on June 10, 1960, a period of approximately 2 years and 8 months. In the Kawama Hotel case the interval was approximately 7 years. Applying the same principle here as on the hotel the Commission finds that this property cost of \$879,000.00 increased in value approximately one-third as much as the Kawama property which we have held had appreciated about three times its original value in the 7 year period. This would place a gross

value of Gustileana of less than double its original cost for a total value of \$1,172,000.00, and the Commission finds that is the fair gross value to be applied here.

As noted above, the Commission finds that the value of the property owned by Gustileana was \$1,172,000.00 on the date of loss, and that the property was then encumbered by a mortgage in the amount of \$439,400.00. Accordingly, the Commission concludes that the net value of the property was \$732,600.00 and that claimant's 25% interest in Gustileana on the date of loss was \$183,150.00.

INMOBILIARIA RODOJO, S.A.

The record discloses that the real property owned by Rodojo, its only asset, was acquired on October 17, 1955 at a cost of \$485,000.00, encumbered by a mortgage in favor of claimant in the amount of \$250,000.00. It further appears from the record that the mortgage in that amount encumbered the property on March 15, 1960, the date of loss.

Claimant has asserted a value of \$850,000.00, supported by a similar appraisal as in the hotel case. Based upon the foregoing reasoning and evidence, the Commission finds that the value of the real property was \$850,000.00 on the date of loss, and that the property was then encumbered by a mortgage in the amount of \$250,000.00. Accordingly, the Commission concludes that the net value of the property was \$600,000.00, and that claimant sustained a loss in that amount within the meaning of Title V of the Act.

DEBT FROM INMOBILIARIA RODOJO, S.A.

As stated above, Rodojo was indebted to claimant in the amount of \$250,000.00 on March 15, 1960, the date of loss. Accordingly, the Commission concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act. (See *Claim of Kramer, Marx, Greenlee and Backus, supra*.)

It also appears that claimant has asserted and the United States Internal Revenue Service has allowed an income tax deduction for claimant's losses.

RECAPITULATION

Claimant's losses may be summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Hotel Kawama	October 15, 1960	\$1,500,000.00
Debt from Hotel Kawama Operating Company, S.A.	October 15, 1960	95,000.00
Gustileana	June 10, 1960	183,150.00
Rodojo	March 15, 1960	600,000.00
Debt from Rodojo	March 15, 1960	250,000.00
	Total	\$2,628,150.00

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corpora-*

tion, Claim No. CU-0644), and in the instant case it is so ordered as follows:

<i>FROM</i>	<i>ON</i>
March 15, 1960	\$ 850,000.00
June 10, 1960	183,150.00
October 15, 1960	1,595,000.00
Total	\$2,628,150.00

CERTIFICATIONS OF LOSS

The Commission certifies that MAC GACHE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Six Hundred Twenty-eight Thousand One Hundred Fifty Dollars (\$2,628,150.00) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., September 24, 1969

IN THE **MATTER OF THE CLAIM** OF SPERRY **RAND CORPORATION**

Claim No. CU-0278—Decision No. CU-2965

Petition to Reopen

AMENDED FINAL DECISION

Under date of October 8, 1968, the Commission entered its Final Decision denying this claim because the evidence failed to established that claimant's wholly owned Cuban subsidiary, Remington Rand de Cuba, S.A. (hereafter called Rand of Cuba), had any value on October 24, 1960, the date the Government of Cuba nationalized Rand of Cuba.

Subsequently, claimant petitioned to reopen the claim on the basis of newly discovered evidence pursuant to the governing regulations of the Commission. (FCSC Reg., 45 C.F.R. §531.5(1) (1970).) The new evidence consists of a copy of a valuation report of Rand of Cuba, prepared in Cuba on November 17, 1960 by A. E. Seymour, claimant's chief executive officer. Appended to the report are copies of detailed supporting schedules and copies of trial balances for Rand of Cuba as of September 30, 1960, apparently prepared after an examination of Rand of Cuba's books and records.

Upon consideration of the newly discovered evidence in light of the entire record, the Commission amends the decision in this matter as follows:

The Commission now finds that on October 24, 1960, the date of loss, the fair market values of Rand of Cuba's assets were as follows:

Cash.....	\$ 15,126.00
Notes and accounts receivable.....	490,476.00
Inventories.....	519,908.00
Rental machines.....	929,571.00
Physical properties.....	58,944.00
Other assets.....	29,484.00
	<hr/>
Total Assets.....	\$2,043,509.00

According to claimant's letter of December 19, 1967, its records show that it was indebted to Rand of Cuba in the amount of \$53,076.66 on the date of loss. Since this debt could not have been taken by the Government of Cuba, the Commission finds that on the date of loss the aggregate amount of Rand of Cuba's assets was \$1,990,432.34.

The Commission finds that Rand of Cuba's liabilities on the date of loss were as follows:

Accounts payable	\$ 254,118.00
Other accrued liabilities	73,959.00
Accrued taxes	4,995.00
Inter-company debts	803,528.56*
Total Liabilities	\$1,136,600.56

*The Commission determined in the *Claim of Remington Rand America Corporation, Claim No. CU-301*, that Rand of Cuba owed this affiliate \$803,528.56 on October 24, 1960, the date of loss, and entered a Certification of Loss in that amount in favor of that claimant.

Accordingly, the Commission finds that the net worth of Rand of Cuba on the date of loss was \$853,831.78, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1959, as amended, interest should be included at the rate of 6% per annum from the respective dates of loss to the date of settlement (see *Claims of Lisle Corporation, Claim No. CU-0644*), and in the instant case it is so ordered.

Accordingly, the following Certification of Loss will be entered, and in all other respects the Final Decision of October 8, 1968, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that SPERRY RAND CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Hundred Fifty-Three Thousand Eight Hundred Thirty-one Dollars and Seventy-Eight Cents (\$853,831.78) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement. Dated at Washington, D. C., June 30, 1972

PROPOSED DECISION**

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$500,000.00 was presented by the SPERRY RAND CORPORATION, based upon the nationalization of its wholly owned subsidiary, Remington Rand de Cuba, S.A., by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the

** This decision was entered as the Commission's Final Decision on October 8, 1968.

Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of Delaware and that at all times between the date of loss and presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Secretary of THE SPERRY RAND CORPORATION has further certified that as of December 30, 1966 less than 2.5% of its issued and outstanding stock is held by shareholders having registered addresses outside the United States. These stockholders are assumed to be nationals of those respective countries.

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of Remington Rand de Cuba, S.A. a corporation existing under the laws of the Republic of Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution No. 3, which listed as nationalized Remington Rand de Cuba, S.A. Accordingly, the Commission finds that Remington Rand de Cuba, S.A., was nationalized by the Government of Cuba on October 24, 1960.

Based on the foregoing, the Commission finds that claimant sustained a loss of its ownership interest within the meaning of Title V of the Act on October 24, 1960, when Remington Rand de Cuba, S.A. was nationalized and expropriated by the Government of Cuba.

Remington Rand de Cuba, S.A. acted as the representative and distributor for SPERRY RAND CORPORATION and for some of the subsidiaries and affiliates of the SPERRY RAND CORPORATION. Remington Rand de Cuba, S.A. mainly concerned itself with selling and leasing data processing equipment, office equipment, office systems, and electric shavers. Remington

Rand de Cuba, S.A. had outstanding and issued 5000 shares with a par value of \$100 each (or 100 pesos).

It is asserted that SPERRY RAND CORPORATION carried the 5000 shares of Remington Rand de Cuba, S.A. on its books at the par value of \$500,000. SPERRY RAND CORPORATION has claimed the "going concern" value of the subsidiary corporation on the date of loss. The claimed amount of \$446,923.34 was arrived at by deducting for the aforementioned \$500,000.00 the amount of \$53,076.66, an amount owed to Remington Rand de Cuba, S.A. by the SPERRY RAND CORPORATION. SPERRY RAND CORPORATION additionally asserts that the going concern value of a subsidiary includes the profits realized by the parent corporation from the sales to the subsidiary.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i. e., fair market value, book value, going concern value, or cost of replacement.

In regard to the financial status of Remington Rand de Cuba, S.A. the record includes *Financial Statements for the Year Ended March 31, 1960 and Auditors Report* made by an independent firm of accountants and auditors. The Balance Sheet, in part summarized, appears as follows:

ASSETS

<i>Current Assets</i>	
Cash.....	\$ 96,061.98
Notes and Accounts Receivable.....	452,984.99
Inventory of Merchandise.....	336,576.07
Parent and Affiliate Companies	54,067.80
(including \$54,052.67 due from	939,690.84
SPERRY RAND CORPORATION)	
Non-Current Notes Receivable.....	29,607.76
Rental Machines.....	301,741.59
Investments and Advances.....	32,045.16
Fixed Assets.....	64,539.75
Deferred Charges _	16,208.57
	\$1,383,833.67

LIABILITIES

<i>Current Liabilities</i>	
Notes Payable to Banks.....	489,089.12
Accounts Payable.....	23,194.45
Taxes Payable and Accrued	58,037.07
Accruals ----	61,669.93

Affiliate Companies		
Remington Rand America Corp	\$810,105.48	
Others.....	46,985.26	857,090.74
Other Current Liabilities		12,343.72 1,501,425.03
Deferred Income.....		9,186.82
Capital Stock		
5000 shares \$100 each par value.....	500,000.00	
Deficit		
Per Profit & Loss Statement.....	626,778.18	(126,778.18)
		<hr/>
		\$1,383,833.67

The balance sheet of Remington Rand de Cuba, S.A. enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets, if any, over contractual liabilities represents the owners' equity, or net worth. The same result usually may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. The balance sheet of March 31, 1960 reflects no book value but on the contrary, a deficit of 126,778.18.

SPERRY RAND CORPORATION has also submitted an uncertified balance sheet which assertedly states the financial condition of Remington Rand de Cuba, S.A. as of September 30, 1960. That balance sheet reflects the following:

Total Assets.....	\$ 984,890.00
Less Contractual Liabilities.....	-1,162,039.00
Deficit.....	(\$ 177,149.00)

It would appear therefore that the Cuban corporation was not only operating at a deficit but that the deficit was increasing. While the claimant did sustain the loss of its proprietary interest it has not established that the interest had any value. Moreover, no evidence has been submitted to establish claimant's contention that the profits of the present corporation provide a basis for finding a value of Remington Rand de Cuba.

Therefore the Commission concludes that claimant corporation, SPERRY RAND CORPORATION, has not sustained a loss based upon net worth of Remington Rand de Cuba. (See the *Claim of Goodyear Tire & Rubber Company*, FCSC Claim No. CU-0887).

The claim is accordingly, denied.

Dated at Washington, D.C., August 29, 1968

IN THE MATTER OF THE CLAIMS OF HARRY SCHRAGE, ET AL.

Claim Nos. CU-1433 and CU-1434—Decision No. CU-0976

Petition to Reopen

AMENDED FINAL DECISION

Under date of September 28, 1971, the Commission entered its Final Decision in this claim certifying a loss in favor of HARRY SCHRAGE for his interests in certain Cuban corporations, and further certifying a loss in favor of the Estate of Rasa Schrage, Deceased for the one-half interests of this decedent in the said Cuban corporations and debts thereof. The interests of one Michael Schrage, deceased spouse of the said Rasa Schrage were not certified in the absence of qualifying information.

Additional information and evidence has been received and the Commission finds that the record now establishes that Rasa Schrage and Michael Schrage were naturalized in 1946. Michael Schrage died intestate on June 26, 1960, survived by his spouse and five children, nationals of the United States at the pertinent times, and who inherited his estate. Rasa Schrage filed Claim No. CU-1434 on April 12, 1967. Said Rasa Schrage died testate on March 19, 1968. Her Estate has been administered and closed, the said five children receiving distribution of the residue. Accordingly, the Commission holds that the interests of the aforesaid Rasa Schrage and Michael Schrage in the subject matter of the claim filed by the late Rasa Schrage have passed to the five children, namely, HARRY SCHRAGE, MORRIS SCHRAGE, MARTHA MATILDA WIDAWER, ROBERT SCHRAGE and EVA EISENSTEIN, who are substituted as claimants in place of their parents, now deceased.

The property subject of these claims is described as follows:

In *Cia. Industrial Cubana de Goma, S.A.* (Coma)

(Intervened on December 15, 1959)

HARRY SCHRAGE, one share of stock—\$361.17

Michael Schrage and Rasa Schrage—499 shares of stock—\$180,225.82

Michael Schrage and Rasa Schrage—debt due from Goma—\$42,556.92

In *Cia. Distribuidora del Calzado, S.A.* (Calzado)

(Intervened on March 15, 1959)

HARRY SCHRAGE, 150 shares of stock—\$56,317.93

Michael Schrage and Rasa Schrage—100 shares of stock—\$37,545.28

Michael Schrage and Rasa Schrage—debt due from Calzado—\$104,082.32

The Commission having found that the interests of Michael Schrage and Rasa Schrage passed to their children in equal shares, the losses of claimants, including the separate interests of HARRY SCHRAGE, are restated as follows:

<i>Claimant</i>	<i>Item</i>	<i>Amount</i>
HARRY SCHRAGE	Goma stock	\$ 36,406.33
	Goma debt	8,511.38
	Calzado stock	63,826.99
	Calzado debt	20,816.46
		\$129,561.16

MORRIS SCHRAGE	Goma stock	\$ 36,045.16
	Goma debt	8,511.38
	Caizado stock	7,509.06
	Caizado debt	20,816.47
		\$72,882.07
MARTHA MATILDA WIDAWER	Goma stock	\$ 36,045.16
	Goma debt	8,511.38
	Caizado stock	7,509.06
	Caizado debt	20,816.47
		\$ 72,882.07
ROBERTA SCHRAGE	Goma stock	\$ 36,045.17
	Goma debt	8,511.39
	Caizado stock	7,509.05
	Caizado debt	20,816.46
		\$ 72,882.07
EVA EISENSTEIN	Goma stock	\$ 36,045.17
	Goma debt	8,511.39
	Caizado stock	7,509.05
	Caizado debt	20,816.46
		\$ 72,882.07

The Commission reaffirms its holding that interest shall be allowed, and it is so ordered as follows:

	<i>FROM</i>	<i>ON</i>
HARRY SCHRAGE	March 15, 1959	\$84,643.45
	December 15, 1959	44,917.71
MORRIS SCHRAGE	March 15, 1959	\$28,325.53
	December 15, 1959	44,556.54
MARTHA MATILDA WIDAWER	March 15, 1959	\$28,325.53
	December 15, 1959	44,556.54
ROBERTA SCHRAGE	March 15, 1959	\$28,325.51
	December 15, 1959	44,556.56
EVA EISENSTEIN	March 15, 1959	\$28,325.51
	December 15, 1959	44,556.56

Accordingly, the Certifications of Loss in the aforesaid Final Decision are set aside, the following Certifications of Loss will be entered, and in all other respects the Final Decision is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that HARRY SCHRAGE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V. of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-Nine Thousand Five Hundred Sixty-One Dollars and Sixteen Cents (\$129,561.16) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MORRIS SCHRAGE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount

of Seventy-Two Thousand Eight Hundred Eighty-Two Dolhears and Seven Cents (\$72,882.07) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARTHA MATILDA WIDAWER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Two Thousand Eight Hundred Eighty-Two Dollars and Seven Cents (\$72,882.07) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that ROBERTA SCHRAGE suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Two Thousand Eight Hundred Eighty-Two Dollars and Seven Cents (\$72,882.07) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that EVA EISENSTEIN suffered a loss, as a result of action of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Two Thousand Eight Hundred Eighty-Two Dollars and Seven Cents (\$72,882.07) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., June 30, 1972

IN THE MATTER OF THE CLAIM OF CARTER H. OGDEN, ET AL.

Claim No. CU-2339—Decision No. CU-1261

Petition to Reopen

AMENDED FINAL DECISION

On February 14, 1968 the Commission issued a Proposed Decision denying the claim of CARTER H. OGDEN for lack of evidence. Subsequently satisfactory evidence was submitted and in the Final Decision of September 22, 1971 the Commission added as claimant ELMA OGDEN, whose correct name is now shown to be Zelma, claimant's first wife, who during her marriage acquired a one-half interest in the property subject of this claim under the community property law of Cuba. The losses of CARTER H. OGDEN and ZELMA OGDEN, were determined as follows:

<i>Item</i>	<i>Value of Each Claimant's Interest</i>	<i>Date of Loss</i>
1. Partnership in Ogden & Ogden.....	\$202,500.00	December 6, 1961
2. Improved real property.....	30,000.00	December 6, 1961
3. Unimproved real property.....	5,000.00	December 6, 1961
4. Personal property of residence.....	5,802.50	December 6, 1961
5. Stocks, bonds, concessions:		
(a) Petrolera Aventura.....	120,000.00	November 23, 1959
(b) Petrolera Arabia.....	4,458.16	November 23, 1959
(c) Inversiones Petroleras.....	750.00	November 23, 1959
(d) Republic of Cuba bonds.....	4,090.00	December 31, 1960
(e) and (f) Motembo and Santo Tomas concessions.....	1,012.16	November 23, 1959
6. Currency.....	3,400.00	August 6, 1961

After the issuance of the Final Decision, claimant CARTER H. OGDEN advised the Commission that he was divorced from his first wife Zelma Ogden since August 22, 1957 and that he married his present wife Dorothy M. Moore on April 29, 1960. He also presented evidence that all properties acquired by him during his first marriage to Zelma Ogden remained his exclusive property after the divorce was granted. He submitted evidence that his second wife was a national of the United States since birth and petitioned the Commission to reopen the claim and to change the Certification of Loss from ELMA OGDEN as it then was entered, to Dorothy M. Ogden.

Due consideration having been given to the petition, the Commission finds that under the community property law of Cuba upon dissolution of the marriage the community property comes to an end, but if both spouses agree that the property shall remain in the ownership of one of the spouses, no separation of the property takes place. On the basis of the record in the instant case the Commission further finds that by an agreement submitted to the appropriate court in Cuba in 1957, ZELMA OGDEN received a lump sum of \$25,000.00 and an alimony allowance of \$500.00 per month during her lifetime or her remarriage, and that she asserted no further claim to the assets of the marriage partnership. The Commission therefore concludes that these assets remains the exclusive property of CARTER H. OGDEN.

All the circumstances surrounding this claim indicate that on April 29, 1960, at the time of the second marriage, certain portions of the property involved in this claim had already been taken by the Government of Cuba and that no additional property in Cuba was acquired by either CARTER H. OGDEN or Dorothy M. Ogden from the date of their marriage to the date of the loss. Consequently, the entire loss, previously determined as having been sustained by CARTER H. OGDEN and ZELMA OGDEN was, in fact, sustained by CARTER H. OGDEN alone, inasmuch as his property owned prior to his second marriage under the provisions of Cuban law did not become community property of his second marriage partnership.

It is therefore concluded that CARTER H. OGDEN suffered the following losses:

<i>Item</i>	<i>Value</i>	<i>Date of Loss</i>
1. Partnership in Ogden & Ogden	\$405,000.00	December 6, 1961
2. Improved real property	60,000.00	December 6, 1961
3. Unimproved real property	10,000.00	December 6, 1961
4. Personal property at Marianao residence	11,605.00	December 6, 1961
5. Stocks, bonds and concessions:		
(a) Petrolera Adventura	240,000.00	November 23, 1959
(b) Petrolera Arabia	8,916.32	November 23, 1959
(c) Inversiones Petroleras	1,500.00	November 23, 1959
(d) Republic of Cuba bonds	8,180.00	December 31, 1960
(e) and (f) mineral concessions	2,024.32	November 23, 1959
6. Currency	6,800.00	August 6, 1961
	\$754,025.64	

The accrued interest is to be computed as follows:

<i>FROM</i>	<i>ON</i>
November 23, 1959	\$252,440.64
December 31, 1960.....	8,180.00
August 6, 1961.....	6,800.00
December 6, 1961.....	486,605.00
	\$754,025.64

Accordingly, the claim of ZELMA OGDEN is hereby dismissed; the Certifications of Loss in the Final Decision of September 22, 1971 are set aside; the following Certification of Loss solely in favor of CARTER H. OGDEN will be entered; and in all other respects the Final Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that CARTER H. OGDEN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Hundred Fifty-Four Thousand Twenty-Five Dollars and Sixty-Four Cents (\$754,025.64) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

IN **THE** MATTER OF **THE** CLAIM OF MARIA VINAS

Claim No. CU-3216—Decision No. CU-6229

Petition to Reopen

AMENDED FINAL DECISION

The Commission issued a Proposed Decision in this claim on June 16, 1971, certifying that claimant suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$139,015.00. No objections to the Proposed Decision were submitted and the Proposed Decision was entered as a Final Decision in this claim on July 19, 1971.

The loss determined by the Proposed Decision included claimant's one-tenth (1/10) interest in improved real property located at General Betancourt Street in Matanzas, known as "Villa Maria." Such loss was determined in the amount of \$5,000.00.

A portion of the claim relating to claimant's interest in improved real property located at No. 45 San Juan Bautista Street in Matanzas was denied for lack of proof.

Documentation obtained from abroad after the Proposed Decision became final, disclosed that, prior to her marriage in 1946, claimant acquired the sole ownership of the property known as "Villa Maria" and of the property at No. 45 San Juan Bautista Street.

The record shows that "Villa Maria" had a value of \$50,000.00, and the realty at No. 45 San Juan Bautista Street a value of \$5,000.00.

Accordingly, the determination of claimant's loss for "Villa Maria" previously established in the amount of \$5,000.00 is now increased to \$50,000.00,

and the claim for the property at No. 45 San Juan Bautista Street, previously denied, is now determined as having arisen on October 14, 1960, the date of taking, in the amount of \$5,000.00. Claimant's total amount of the loss and the accrued interest are now restated as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
37, 39, 41 San Juan Bautista.....	October 14, 1960	\$ 1,500.00
Villa Maria.....	October 14, 1960	50,000.00
Beach Property.....	October 14, 1960	3,500.00
45 San Juan Bautista.....	October 14, 1960	5,000.00
Accounts Receivable.....	January 12, 1961	3,300.00
Central Resulta.....	October 13, 1960	25,010.31
Ferrocarril Resulta.....	October 13, 1960	1,250.00
Quemado de Guines.....	October 13, 1960	19,600.00
Azucarera de Sagua.....	January 12, 1961	12,679.69
Defensa.....	August 8, 1961	16,000.00
General de Seguros.....	December 6, 1961	10,255.00
Colonia Reyes.....	October 13, 1960	200.00
Zortzi Anai.....	October 14, 1960	720.00
Beta.....	October 14, 1960	23,000.00
El Infierno.....	December 6, 1961	17,000.00
	Total	\$189,015.00

The Commission affirms its holding that interest will be included in the Certification and it will be included as follows:

<i>FROM</i>	<i>ON</i>
October 13, 1960.....	\$ 46,060.31
October 14, 1960.....	83,720.00
January 12, 1961.....	15,979.69
August 8, 1961.....	16,000.00
December 6, 1961.....	27,255.00
Total.....	\$189,015.00

Accordingly, the Certification of Loss in the Proposed Decision of June 16, 1971, which became final on July 19, 1971, is set aside, the following Certification will be entered, and in all other respects the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that MARIA VINAS suffered a loss, as a result of actions of the Government -of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Eighty-Nine Thousand Fifteen Dollars (\$189,015.00) with interest thereon at 6% per annum from the respective dates of taking to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

IN **THE** MATTER OF **THE** CLAIM OF FRANK **STEINHART, JR., ET AL.**

Claim No. CU-0231—Decision No. CU-6076

Petition to Reopen

AMENDED FINAL DECISION

This claim, originally opened by FRANK STEINHART, JR., based on inherited and purchased property, was the subject of Proposed and Final Decisions. Thereafter claimant petitioned that his sister ALICE STEINHART DE LA LLAMA be permitted to join in the claim for her interests in the said inherited property, and for her other property.

The petition having been considered, and ALICE STEINHART DE LA LLAMA having been a national of the United States at all times pertinent to this claim, it is granted.

The Commission previously found that FRANK STEINHART inherited a one-fourth interest in a plot of 10,000 square meters in Cojimar, valued at \$8.00 per square meter, and now finds that ALICE STEINHART DE LA LLAMA also inherited a one-fourth interest in said plot, which was taken on December 6, 1961, and that she thereby suffered a loss of \$20,000. This claimant had no interest in another plot of 1,006.62 square meters owned in one-half part by her brother.

Further the Commission finds that ALICE STEINHART DE LA LLAMA inherited a one-fourth interest in property at 120 Prado, Havana, which was taken on December 6, 1961, and that she thereby suffered a loss of \$57,500.

Additionally, based on the record, the Commission finds that pursuant to the community property law of Cuba, claimant ALICE STEINHART DE LA LLAMA owned a one-half interest in a residence at Varadero Beach, with certain personality therein. The Commission finds that this property was also taken by the Government of Cuba on December 6, 1961.

In arriving at the value thereof, the Commission has considered the claimant's figures indicating a valuation of \$60,000 for the land, and \$60,000 for the house; her brother's affidavit describing the property as a 4-bedroom house, with usual living facilities, and beach frontage; his assertion that an offer of \$90,000 for the property had been refused. Considering this and the values of similar properties in Cuba, the Commission finds that the improved realty had a value of \$100,000 and that claimant suffered a loss of \$50,000 in this connection.

Further, the Commission finds that claimant's interest in furnishings including kitchen appliances and garden equipment had a value of \$2,500, taken on December 6, 1961.

Re-examination of the file discloses that in the Final Decision restating the losses of FRANK STEINHART, JR. there was inadvertently omitted the item of land in Buena Vista having a value of \$1,900 which however, was certified in the Proposed Decision.

Accordingly, the claimants' losses, suffered on December 6, 1961, are restated as follows:

FRANK STEINHART:

(1) Finca ^{Happy} Hollow.....	\$200,000.00
(2) House at No. 120 Prado, Havana (1/4).....	57,500.00
(3) Land in San Miguel del Padron.....	2,000.00
(4) Land in Cojimar (1/4).....	20,000.00
(5) Land in Cojimar (1/2).....	4,026.48
(6) Land in Marianao.....	173,096.10
(7) Land in Santa Fe.....	23,347.92
(8) "La Cubana" securities.....	31,500.00
(9) Land in Buena Vista.....	1,900.00
	\$513,370.50

ALICE STEINHART DE LA LLAMA:

(1) Land in Cojimar (1/4).....	\$ 20,000.00
(2) House at No. 120 Prado (1/4).....	57,500.00
(3) Varadero residence (1/2).....	50,000.00
(4) Personalty (1/2).....	2,500.00
	\$130,000.00

The Commission affirms its holding that interest shall be included in the Certifications of Loss from the date of loss to the date of settlement.

Accordingly, the Certification of Loss in the Final Decision is set aside and the following Certifications of Loss will be entered.

CERTIFICATIONS OF LOSS

The Commission certifies that FRANK STEINHART, JR. suffered a loss, as a result of the actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Thirteen Thousand Three Hundred Seventy Dollars and Fifty Cents (\$513,370.50) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement; and

The Commission certifies that ALICE STEINHART DE LA LLAMA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Thirty Thousand (\$130,000.00) with interest thereon at 6% per annum from December 6, 1961, to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

**IN THE MATTER OF THE CLAIM OF SWEET PAPER SALES
CORPORATION**

Claim No. CU-1874—Decision No. CU-1671

Petition to Reopen

AMENDED FINAL DECISION

Under date of October 16, 1968, the Commission entered its Final Decision denying this claim for lack of proof. Subsequently, supporting evidence was submitted on behalf of claimant.

Upon consideration of the new evidence, the Commission amends the decision in this matter as follows:

Section 502(1) (B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of New York; and that all pertinent times all of its outstanding capital stock was owned in equal shares by Samuel Scheck and Henrietta Scheck, husband and wife. The evidences establishes that Samuel Scheck was a United States national from birth until his death in 1971. Therefore, 50% of claimant's outstanding capital stock was owned by a United States national at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

The Commission finds on the basis of the evidence of record that claimant owned 2,585 shares of stock in Cia. Papalera Flamingo, S.A. (Flamingo), a Cuban corporation, which was nationalized by the Government of Cuba on October 24, 1960 pursuant to Law 851.

Since Flamingo was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1) (B) of the Act, *supra*. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the balance sheet for Flamingo as of December 31, 1959, a copy of which was submitted.

That balance sheet shows that Flamingo owned assets in Cuba aggregating \$341,278.05, after deleting goods in transit in the amount of \$11,329.78 because that asset could not have been taken by Cuba. It further appears that its liabilities aggregated \$76,860.34. The Commission therefore finds that the net worth of Flamingo on October 24, 1960 was \$264,417.71. Since Flamingo had 2,635 shares of outstanding capital stock, each share of stock had a value of \$100.3483, and claimant's 2,585 shares of stock had an aggregate value of \$259,400.36.

The Commission has decided that in certifications of loss on claims deter-

mined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

Accordingly, the following Certification of Loss will be entered.

CERTIFICATION OF LOSS

The Commission certifies that SWEET PAPER SALES CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Fifty-Nine Thousand Four Hundred Dollars and Thirty-Six Cents (\$259,400.36) with interest at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

IN THE MATTER OF THE CLAIM OF FREDERIC **SAMUELS**

Claim No. CU-0263—Decision No. CU-3761

Petition to Reopen on Commission's Own Motion

AMENDED FINAL DECISION

Under date of June 2, 1971, the Commission entered its Final Decision on this claim certifying a loss in favor of claimant in the amount of \$62,242.08 plus interest. That certification included \$61,278.08 for claimant's 375 shares of stock in Cia. Tabacalera de Rancho Boyeros, S.A. (Rancho), a Cuban corporation, and \$964.00 for certain tangible personal property in Cuba.

A portion of the claim for 150 shares of stock in Rothschild-Samuels-Duignan, S.A. (RSD), a Cuban corporation, was denied as being not certifiable pursuant to Title V of the Act. RSD's balance sheet as of September 30, 1960 showed that its assets and liabilities aggregated \$838,528.26 and \$101,390.12, respectively, **thus indicating an apparent net worth of \$737,138.12**. It further appeared that RSD's stockholders had recovered \$757,451.09 representing certain accounts receivable of RSD.

Section 506 of the Act provides that the Commission shall reduce the amount of any claim by all amounts received by the claimant on account of the same loss or losses. Inasmuch as the amount recovered exceeded the apparent net worth of RSD, the Commission concluded that no amount could be certified with respect to the stock interest in RSD.

In the related *Claim of Cecile C. Samuels, et al*; Claim No. CU-0234, the Commission found that RSD owned an asset in the nature of goodwill which was not recorded on its books and records. The Commission determined that this asset had a value of \$473,818.27, and that each share of RSD had a value of \$111.6183 on September 15, 1960, the date of loss.

Accordingly, the Commission has reopened this matter on its own motion and amends the decision on this claim as follows:

The Commission finds that claimant's 150 shares of stock in RSD had a value of \$16,742.75, and concludes that he sustained a loss in that amount on September 15, 1960.

Claimant's losses are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Stock interest in Rancho.....	October 24, 1960	\$61,278.08
Tangible personal property	September 15, 1960	964.00
Stock interest in RSD.....	September 15, 1960	16,742.75
	Total	\$78,984.83

The Commission reaffirms its holding that interest shall be allowed, and it is so ordered as follows:

<i>FROM</i>	<i>ON</i>
September 15, 1960.....	\$17,706.75
October 24, 1960	61,278.08
Total.....	\$78,984.83

Accordingly, the Certification of Loss in the Proposed Decision of July 23, 1969 which was affirmed by the Final Decision of June 2, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that FREDERIC SAMUELS suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Eight Thousand Nine Hundred Eighty-Four Dollars and Eighty-Three Cents (\$78,984.83) with interest thereon at 6 $\frac{1}{4}$ per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C., June 30, 1972.

IN **THE MATTER OF THE CLAIM OF HOWARD E. HOLTZMAN, ET AL.**

Claim No. CU-2168—Decision No. CU-3522

The Commission may, on its own motion, reopen a claim and make adjustments based upon its findings in a related claim.

AMENDED PROPOSED DECISION*

Under date of March 19, 1969, the Commission entered its Final Decision certifying losses in favor of claimants as follows:

HOWARD E. HOLTZMAN—\$303,023.72 plus interest;

MORTON L. PERRY—\$202,015.82 plus interest; and

LOUIS SUKONIK—\$303,023.72 plus interest.

These amounts represented claimants' stock interests in Fomento Ball-Brothers, S.A. (Fomento), a Cuban corporation which was operating certain mines in Cuba pursuant to a lease from the Sandy Mining Company, a Cuban corporation. In determining the values of claimants' 30%, 20% and 30% stock interests, respectively, in Fomento, the Commission deducted Fomento's liabilities from its assets to find the net worth of Fomento. Since the record

* This decision was entered as the Commission's Final Decision on November 19, 1971.

indicated that the 10% royalty with respect to ore at the mine site, valued at \$350,000.00, had been paid, no deductions were made in this respect.

A claim was presented by Sandy Fryer, sole owner of the Sandy Mining Company, Fomento's lessor, Claim No. CU-1617. In that claim, the Commission found in the basis of the entire record, including the record in this case, that on March 1, 1959, the date of loss, Fomento owed its lessor a royalty of \$35,000.00 with respect to the ore at the mine site which had not been taken into consideration in determining this claim.

The valuations of claimants' stock interests in Fomento were based upon Fomento's assets and liabilities, aggregating \$1,061,079.08 and \$51,000.00, respectively. The Commission now finds that Fomento's liabilities on the date of loss amounted to \$86,000.00. Therefore the net worth of Fomento on March 1, 1959 was \$975,079.08, and claimants' 30%, 20% and 30% stock interests, respectively, had values of \$292,523.72, \$195,015.82 and \$292,523.72.

Accordingly, the Final Decision of March 19, 1969 is set aside and the Proposed Decision of February 19, 1969 is amended; the Certifications of Loss in the Proposed Decision are set aside and the following Certifications of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that HOWARD E. HOLTZMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Ninety-two Thousand Five Hundred Twenty-Three Dollars and Seventy-Two Cents (\$292,523.72) with interest at 6% per annum from March 1, 1959 to the date of settlement;

The Commission certifies that MORTON L. PERRY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Ninety-Five Thousand Fifteen Dollars and Eighty-Two Cents (\$195,015.82) with interest at 6% per annum from March 1, 1959 to the date of settlement; and

The Commission certifies that LOUIS SUKONIK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Ninety-Two Thousand Five Hundred Twenty-Three Dollars and Seventy-Two Cents (\$292,523.72) with interest at 6% per annum from March 1, 1959 to the date of settlement.

Dated at Washington, D.C., October 20, 1971.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented originally by Fomento Ball-Bro, S.A., based upon the asserted loss of \$737,886.57, sustained as a result of the taking of its personal property by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§ 1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the

Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record discloses that the original claimant, Fomento Ball-Bro, S.A., hereafter referred to as Fomento, was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined by Section 502(1) (B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon his ownership interest therein. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Accordingly, **HOWARD E. HOLTZMAN, MORTON L. PERRY and LOUIS SUKONIK**, nationals of the United States since birth and stockholders of Fomento, have been substituted as claimants, and as claimants they have increased the amount of their claim to \$1,188,516.57.

The record includes the minutes of a meeting of the stockholders of Fomento, affidavits and stock certificates, on the basis of which the Commission finds that **HOWARD E. HOLTZMAN, MORTON L. PERRY, and LOUIS SUKONIK** owned 30 shares, 20 shares, and 30 shares, respectively, of Fomento, representing 80% of the total outstanding capital stock of Fomento. The remaining 20 shares were owned by a nonnational of the United States.

The evidence establishes that Fomento entered into an agreement on September 5, 1957 with the Sandy Mining Company, a Cuban corporation, pursuant to which Fomento leased two mining sites known as "El Americano" and "Demasia A Josefina" for the purpose of mining and extracting manganese ore deposits. The lease was for one year, and was renewable from year to year at the option of Fomento, the maximum period being 30 years. Fomento was required to pay royalties to the lessor of 10% of the sales price for each long ton (2,240 pounds) mined less certain expenses, and a minimum rental was also included. Other procedural and reheated matters were set forth in a lease, which was executed between **HOWARD E. HOLTZMAN**, President of Fomento, and the President of the lessor. It appears that Fomento had acquired the right to exploit the "Josefina" mine from the predecessor in interest of Sandy Mining Company. On the

basis of this right and a preliminary geological report, dated June 29, 1956, Fomento entered into an agreement in February 1957 with a Delaware corporation, E. J. Lavino and Company, referred to as Lavino, providing for the sale of 10,000 tons of manganese dioxide to Lavino during the period ending April 30, 1958. The agreed price was \$90.00 per dry ton for the first 5,000 dry tons and the balance at \$85.00 per dry ton, with a penalty against Fomento of \$2.50 for each percent of manganese dioxide below 84%, and Lavino was authorized to reject any ore with less than 84% manganese dioxide. Lavino was to advance \$50,000.00 to Fomento in consideration of which Fomento was to pledge its lease of "Josefina" to Lavino and credit Lavino \$10.00 per dry ton on the first 5,000 tons delivered to Lavino in liquidation of said advance.

The record shows that mining operations were begun by Fomento and shipments were made to Lavino. The record contains a copy of a document marked "Final Settlement Statement" from Lavino to Fomento, dated November 19, 1957. That statement indicates the receipt by Lavino at its Philadelphia, Pennsylvania office on October 29, 1957 of 103,418.4 dry tons of ore which, upon analysis, was found to contain 81.75% manganese dioxide. Accordingly, the statement indicates that deductions were made pursuant to the penalty clause of the agreement as well as for certain expenses, likewise covered by that agreement.

The evidence also includes affidavits from individuals having personal knowledge of the facts, attesting that on March 1, 1959 Cuban militiamen seized the two mines and offices of Fomento together with all of Fomento's machinery, equipment and other personal property related to the operation of the mines. These affiants also stated that Fomento's offices and employees had been prohibited from entering upon the premises and that they had later observed that the mines continued to be operated on behalf of the Cuban Government.

On the basis of all the evidence of record, the Commission finds that Fomento owned certain personal property appurtenant to its mining operations of the "El Americano" and "Josefina" mines and an inventory of mined ore on March 1, 1959 when all of said property was seized by the Government of Cuba. It is therefore concluded that the three claimants herein sustained losses within the meaning of Title V of the Act.

In determining the value of the personal property thus taken, exclusive of the inventory of mined ore, the Commission considered the nature of Fomento's operations, affidavits from claimants and others having personal knowledge of the facts as well as lists of the various items of personalty present when Cuba seized the property.

One of the itemized lists appears as part of the affidavit of HOWARD E. HOLTZMAN, dated June 13, 1958, which aggregates the sum of \$612,516.57. This list, however, includes the amounts of \$3,600.00 and \$450,000.00, for inventory of ore discussed separately below, thereby reducing this sum to \$158,916.57. According to this affidavit, many of the items of machinery and equipment were purchased in 1956, some in 1957 and others were purchased from local concerns or built on the sites, apparently during those dates, and the amounts set forth are the prices paid for these items of property. Considering the nature of the personalty and the use to which it was devoted, the Commission concludes that it would be fair and equitable to apply a depreciation factor of 15% in order to determine the reasonable value of the property on the date of loss. Accordingly, the Commission

finds that the said personal property had a value of \$135,079.08 on the date of loss.

A second list of items of property claimed includes the following:

Stopping, mucking and shafting of mines	\$ 60,000.00
Exploration and staking or ore sites	22,000.00
Road building.....	18,000.00
	\$100,000.00

This list also included "Leaseholds" in the amount of \$26,000.00, which will be discussed below.

The Commission finds that the items appearing on the foregoing list were necessary appurtenances to the mining operations and enhanced the value of the mines. The Commission finds that the values asserted for these items are fair and reasonable, and that these items of property had an aggregate value of \$100,000.00 on the date of loss.

With respect to the inventory of ore, claimants have computed their claim on the basis of \$90.00 per ton, asserting in effect that the ore was at least 84% manganese dioxide and applying the price included in Fomento's 1957 agreement with Lavino.

It is noted in this connection that the geologist's report of June 29, 1956 estimated the existence of 125,000 tons which would yield 16,875 tons of 85% ore by the use of conventional methods, and that with special procedures it could yield another 8,125 tons of 85% ore, or 25,000 tons. He stated furthermore that more exploration may yield as much as 50,000 tons, but that there was a "lack of openings into the ore and lack of actual plant tests on the ore." An affidavit of December 5, 1968 from Franz R. Dykstra, a geologist formerly employed by Lavino from 1949 to 1965, states that he recommended the agreement between Lavino and Fomento in 1957. The "Final Settlement Statement" of November 19, 1957 from Lavino to Fomento would appear to indicate an end of relations. Moreover, there is insufficient evidence to establish that the inventory of ore taken by Cuba on March 1, 1959 was 84% or more pure manganese dioxide, or that its market or fair value on that date was \$90.00 per dry ton, as asserted by claimants. The Commission also takes note of statements in Mr. HOLTZMAN's affidavit of June 13, 1958 that from January 1956 through July 1956 Fomento sold lower grade ore extracted from its leased mines at \$40.00 per ton, and from July 1956 to April 1959, Fomento sold lower grade ore at \$60.00 per ton.

Additionally, certain rentals, royalties and other expenses were involved even if sales at \$90.00 per ton were made.

The record does not contain any balance sheets or other financial statements concerning Fomento, it appearing that all records are in Cuba and unavailable to claimants. Mr. HOLTZMAN has stated, however, in answer to the Commission's inquiries that on the date of loss the only obligations of Fomento were \$45,000.00 to Lavino and salaries payable in the amount of \$6,000.00. He further stated that the monthly payroll was about \$24,000.00. Even if it could be shown that the value of the inventory were as asserted, other expenses would have to be taken into account as well, such as freight charges, loading and unloading fees, etc.

Upon careful consideration of this matter, the Commission concludes that the evidence does not warrant the finding that the inventory of ore,

amounting to 5,040 tons according to Mr. HOLTZMAN's affidavit, had a value of \$90.00 per ton on the date of loss. Taking all of the circumstances into consideration, the Commission finds that the fair and equitable value of the inventory of ore at the mine sites was \$350,000.00.

The remaining items for which claim is made are "Leaseholds" in the amount of \$26,000.00, and the "fair market value of the company's mining operations as a going business." Considering the fact that the lease granted Fomento the right to mine the two sites for a period of 30 years, less than 2 years of which had expired as of the date of loss, the Commission finds that the fair and reasonable value of the leasehold was \$26,000.00, as stated by claimants.

The Commission has carefully considered the claim for the value of the "mining operations as a going business." The geologist's report of June 29, 1956, before operations commenced, indicates a potential of at least 25,000 tons of high grade ore with the possibility of mining another 25,000 tons of high grade ore if certain special procedures were followed. On the basis of all the evidence of record the Commission finds that the fair and reasonable value of the mines as a going business was \$450,000.00 on the date of loss.

The Commission further finds that the aggregate amount of losses sustained by Fomento was \$1,061,079.08, less liabilities of \$51,000.00, as stated by Mr. HOLTZMAN, or a net loss of \$1,010,079.08. It therefore concludes that claimants, HOWARD E. HOLTZMAN, MORTON L. PERRY AND LOUIS SUKONIK, sustained losses within the meaning of Title V of the Act in the amounts of \$303,023.72, \$202,015.82, and \$303,023.72, respectively, based upon their stock interests in Fomento.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HOWARD E. HOLTZMAN suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Three Thousand Twenty-three Dollars and Seventy-two Cents (\$303,023.72), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement;

the Commission certifies that MORTON L. PERRY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Two Thousand Fifteen Dollars and Eighty-two Cents (\$202,015.82), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement; and

the Commission certifies that LOUIS SUKONIK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Three Thousand Twenty-three Dollars and Seventy-two Cents (\$303,023.72), with interest thereon at 6% per annum from March 1, 1959 to the date of settlement.

Dated at Washington, D.C. February 19, 1969.

IN THE MATTER OF THE CLAIM OF MATTHEW A. FRYER

Claim No. CU-1617—Decision No. CU-6241

Petition to Reopen

AMENDED FINAL DECISION

Under date of October 20, 1971, the Commission entered its Final Decision on this claim certifying a loss in favor of claimant in the amount of \$435,000.00 plus interest. A portion of the claim based upon a mining concession covering the Antonio Mine was denied for lack of proof.

Subsequently, claimant petitioned to reopen the claim, based upon newly discovered evidence, pursuant to the governing regulations of the Commission. (FCSC Reg., 45 C.F.R. §531.5 (1) (1970).) The new evidence consists of a detailed affidavit of January 26, 1972 from claimant; copies of contemporaneous correspondence indicating that the Antonio Mine contained valuable ores and was in operation; and an affidavit of January 24, 1972 from an individual who had investigated the Antonio Mine.

Upon consideration of the new evidence in light of the entire record, the Commission amends the decision in this matter as follows:

The Commission finds that since January 30, 1954 claimant was the lessee for an indefinite term of a mining concession covering the Antonio Mine at Las Villas Province, Cuba. The Commission further finds that the mine was taken by the Government of Cuba on October 15, 1960.

The record shows that the Antonio Mine contained 2,857,142 tons of ore. Claimant's obligation to his lessors was \$0.20 per ton, and pursuant to a sublease in 1958 with a Cuban corporation the sublessee's obligation was to pay claimant \$1.00 per ton and \$0.20 per ton to claimant's lessors. Accordingly, claimant's equity in the ores was \$1.00 per ton.

It further appears that the Antonio Mine was in operation, and that as a result of substantial investments by claimant's lessee the production capacity of the mine was 10,000 tons of ore per month. Therefore, the ores in the mine would be exhausted in almost 24 years.

The Commission finds that the valuation most appropriate to the Antonio Mine and equitable to claimant is the result obtained by the application of a 12% annual discount rate to the yearly valuations of claimant's equity in the ores during the said period of almost 24 years in order to arrive at the aggregate value thereof on October 15, 1960, the date of loss. Accordingly, the Commission finds that claimant's equity in the ores had the following value on October 15, 1960:

<i>Year</i>	<i>Gross Value</i>	<i>Discount Factor</i>	<i>Net Value</i>
1961	\$ 120,000.00	.892857	\$107,142.84
1962	120,000.00	.797194	95,663.28
1963	120,000.00	.711780	85,413.60
1964	120,000.00	.635518	76,262.16
1965	120,000.00	.567427	68,091.24
1966	120,000.00	.506631	60,795.72
1967	120,000.00	.452349	54,281.88
1968	120,000.00	.403883	48,465.96
1969	120,000.00	.360610	43,273.20
1970	120,000.00	.321973	38,636.76

1971	120,000.00	.287476	34,497.12
1972	120,000.00	.256675	30,801.00
1973	120,000.00	.229174	27,500.88
1974	120,000.00	.204620	24,554.40
1975	120,000.00	.182696	21,923.52
1976	120,000.00	.163122	19,574.64
1977	120,000.00	.145644	17,477.28
1978	120,000.00	.130040	15,604.80
1979	120,000.00	.116107	13,932.84
1980	120,000.00	.103667	12,440.04
1981	120,000.00	.092560	11,107.20
1982	120,000.00	.082643	9,917.16
1983	120,000.00	.073788	8,854.56
1984	117,142.00	.065882	7,717.55

Totals	\$2,857,142.00		\$933,929.63
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Claimant's total losses are summarized as follows:

<i>Item of Property</i>	<i>Date of Loss</i>	<i>Amount</i>
Americano Mine.....	March 1, 1959	\$ 435,000.00
Antonio Mine.....	October 15, 1960	933,929.63
	Total	\$1,368,929.63

The Commission reaffirms its holding that interest shall be allowed, and it is so ordered as follows :

<i>FROM</i>	<i>ON</i>
March 1, 1959.....	\$ 435,000.00
October 15, 1960.....	933,929.63
Total.....	\$1,368,929.63

Accordingly, the Certification of Loss in the Final Decision of October 20, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Final Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that MATTHEW A. FRYER a/k/a SANDY FRYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Three Hundred Sixty-eight Thousand Nine Hundred Twenty-nine Dollars and Sixty-three Cents (\$1,368,929.63) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C. June 30, 1972.

FINAL DECISION

Under date of June 23, 1971, the Commission issued its Proposed Decision certifying a loss in favor of claimant in the amount of \$400,000.00 plus interest. The amount allowed represented claimant's loss of royalties with respect to the lease of a Cuban mine, El Americano, to a Cuba corporation,

Fomento Ball-Pro, S.A. (Fomento). A portion of the claim based on a 10% royalty for the ore at the mine site in the amount of \$35,000.00 was denied because the evidence of record, including the record in the claim of the lessee, *Claim of Howard E. Holtzman, et. al.*, Claim No. CU-2168, indicated that said royalty had been paid. Other portions of the claim were also denied.

Claimant objected to the Proposed Decision insofar as it denied portions of the claim, and requested an oral hearing which was held on October 6, 1971. At that hearing, counsel for claimant offered oral argument and introduced new documentary evidence. Testimony was heard from claimant and Joseph S. Sirgo, a mining engineer.

Upon consideration of the entire record, including the evidence presented at the oral hearing, the Commission finds that Fomento, the lessee, did not pay the said royalty of \$35,000.00. It is therefore concluded that claimant's loss in this case should be increased by that amount.

Accordingly, the Certification of Loss in the Proposed Decision of June 23, 1971 is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that MATTHEW A. FRYER a/k/a SANDY FRYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Thirty-Five Thousand Dollars (\$435,000.00) with interest thereon at 6% per annum from March 1, 1959 to the date of settlement.

Dated at Washington, D.C. October 20, 1971.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$4,486,942.00, was presented by MATTHEW A. FRYER a/k/a SANDY FRYER based upon the asserted loss of mines in Cuba. Claimant has been a national of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643—1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant asserts the following losses:

El Americano and Demasia a Josefina Mines.....	\$1,629,800.00
Antonio Mine - - - - -	2,857,142.00
	\$4,486,942.00

EL AMERICANO AND DEMASIA A JOSEFINA

According to claimant's statements of December 8, 1969, he went to Cuba in 1949 and later met Mr. Joseph Alloway who owned the El Americano and Demasia a Josefina, two adjoining manganese mines in Bayamo, Oriente Province, Cuba, which mines are hereafter called Americano. Mr. Alloway gave the claimant a power of attorney (dated March 24, 1954) to act on his behalf with respect to his Cuban property (Exhibit 2). Claimant states that in October 1954 he purchased Americano for \$5,000.00, and he claims ownership in fee simple. The Commission's records include the *Claim of Howard E. Holtzman, et al.*, Claim No. CU-2168, involving an 80% stock interest in Fomento Ball-Bro, S.A. (Fomento), a Cuban corporation which leased Americano in 1957. That record contains a report from abroad which indicates that the rights with respect to Americano were acquired by the Sandy Mining Company for \$500.00.

It further appears that the Sandy Mining Company (Cia. Minera Sandy, S.A.), a Cuban corporation, was wholly owned by claimant, and that Americano was its sole asset. On September 5, 1957, Sandy Mining Company entered into a contract with Fomento pursuant to which Americano was leased to Fomento for one year, renewable from year to year at the option of the lessee, the maximum period being 30 years (Exhibit 10). That lease recites that Sandy Mining Company owns mining concessions with respect to El Americano and Demasia a Josefina in Bayamo, Oriente Province, Cuba. The Commission therefore finds that Sandy Mining Company owned mining concessions with respect to both mines (Americano).

In *Holtzman, supra*, the Commission found that Americano had been taken by the Government of Cuba on March 1, 1959 while Fomento was in possession.

Since Sandy Mining Company was organized under the laws of Cuba it does not qualify as a corporate "national of the United States" defined under Section 502(1) (B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See *Claim of Parke, Davis & Company*, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." This phraseology does not differ from

the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In his affidavit of March 24, 1971, claimant computes the amount of his claim on account of Fomento as follows:

1. 10% of \$350,000.00, the amount found by the Commission as the value of the inventory of mined ore at the mine sites in <i>Holtzman, supra</i>	\$ 35,000.00
2. 10% of \$450,000.00, the amount found by the Commission as the value of the leased mines as a "going business" in <i>Holtzman, supra</i>	45,000.00
3. 10% of the residual value of the ore after expiration of Fomento's lease	1,549,800.00
Total.....*	\$1,629,800.00

1. Ore at the Mine Sites

The Commission found in *Holtzman, supra*, that Fomento's interest in the mined ore at the mine sites had a value of \$350,000.00. It was noted that pursuant to the lease from Sandy Mining Company to Fomento, the lessor was to receive 10% of the net sales price for each mined ton of concentrated ore after deduction of any freight and related expenses not to exceed \$10.00 per ton for transportation and delivery to the shipping port. Since no such expenses had been incurred by Fomento with respect to the ore at the mine sites, no deductions were made.

Claimant asserts a loss of \$35,000.00 based upon 10% of the value of the ore at the mine sites, which he states was due pursuant to the lease with Fomento. The record in *Holtzman, supra*, includes an affidavit of December 23, 1968 from Howard E. Holtzman, in which affiant attests that all royalties on the mined ore at the mine sites had been paid. On that basis, the Commission found that the value of Fomento's equity in the ore at the mine sites was equivalent to the value of said ore.

The Regulation of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Upon consideration of the entire record in this claim and that of *Holtzman, supra*, the Commission finds that claimant herein has failed to sustain the burden of proof with respect to the portion of the claim based upon 10% of the value of the mined ore at the mine sites. Accordingly, this portion of the claim is denied.

2. 10% of "Going Business" Value

In *Holtzman, supra*, the Commission found that the value of Fomento's mining operations as a "going business" was \$450,000.00. The Commission considered a geologist's report of June 29, 1956 which indicated a potential of 25,000 tons of high grade ore and the possibility of mining another 25,000 tons of such ore if certain procedures were followed.

In finding that the "fair and reasonable value of the mines as a going business" was \$450,000.00 on the date of loss, the Commission took into consideration all relevant factors in this respect, such as the amount of ore

in the mines, the costs of mining operations, and other expenses involved in refining and selling the ore, as well as the royalties due the lessor. Since the value found by the Commission, \$450,000.00, was not the value of the ore in the mines, claimant is not entitled to 10% of that amount. Rather, claimant is entitled, under the terms of the lease, as sole owner of Sandy Mining Company, to an allowance of 10% of the net value of the ore in the mines on the basis that it constituted the lessor's equity in the ore, in the nature of a debt of a nationalized enterprise. (See *Claim of Kramer, Marx, Greenlee & Backus*, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

Upon consideration of the entire record in this claim and that of *Holtzman, supra*, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is the result obtained from concluding that Americano contained 50,000 tons of high grade ore valued at \$90.00 per ton. The Commission therefore finds that the gross value of said ore on March 1, 1959, the date of loss, was \$4,500,000.00. As already noted, the lease provided for the deduction of transportation and delivery expenses not to exceed \$10.00 per ton. In the absence of evidence to the contrary, the Commission finds that a deduction of \$500,000.00 should be made, resulting in a net value of \$4,000,000.00 for the 50,000 tons of high grade ore in Americano. Therefore, the debt due Sandy Mining Company on account of said ore or its equity therein, was 10% thereof of \$400,000.00.

3. 10% of Residual Value of Ore After Expiration of Fomento's Lease

Claimant asserts that Americano contained considerably more ore than the Commission found in *Holtzman, supra*, and claims a loss of \$1,549,800.00 as the value of the 10% royalty. Claimant relies entirely upon statements of one Joseph S. Sirgo, formerly employed by Fomento as manager of the mines (Exhibit 6). According to Mr. Sirgo's sworn statements of October 20, 1969 (Exhibit 6) and his report of August 9, 1967 to claimant, Americano contained 189,000 tons of high grade ore which had a gross value of \$17,388,000.00. Claimant computes this portion of his claim by deducting from that amount \$1,890,000.00 on account of transportation and delivery expenses and taking 10% of the result.

In claimant's affidavits of December 19, 1969 and March 24, 1971, and in Mr. Sirgo's affidavit of February 10, 1970 (Exhibit 11), it is stated that after Fomento acquired the lease covering Americano, considerable drilling and exploration took place, which led to Mr. Sirgo's report. Upon inquiry, counsel for claimant stated on May 28, 1971 for the record that in 1958 Mr. Sirgo had reported his findings to Fomento. An affidavit of October 13, 1967 from Mr. Holtzman, President of Fomento, stated he had learned that Sirgo had been killed by Castro's men.

It appeared desirable that the record reflect the reason why Mr. Holtzman had never mentioned such a report from Mr. Sirgo, since it would have been to his advantage to do, as Fomento held a long term lease on Americano. The record shows that Mr. Holtzman relied on the geologist's report of June 29, 1956 which indicates that Americano had 50,000 tons of high grade ore, whereas Mr. Sirgo's report indicates the presence of 189,000 tons of such ore. Counsel submitted an affidavit of May 31, 1971 from claimant. Claimant recited therein that Fomento was under-capitalized and was using poor equipment, according to Mr. Sirgo; that Fomento simply exploited the mines and was satisfied with that alone; and that Mr. Sirgo

had advised claimant that he was not aware that Mr. Holtzman was connected with Fomento.

The Commission has fully considered this entire matter. However the sole issue is whether there would be any ore left in Americano after the termination of Fomento's 30-year lease in 1987. As already noted, Sandy Mining Company did not own Americano in fee simple, but owned only mining concessions covering the two mines in question.

When this matter is considered in that light, the following appears. According to Holtzman's affidavit of December 23, 1968, Fomento was extracting crude ore at the rate of 6,000 tons per month, realizing about 1,200 of high grade ore. Whether Americano contained 50,000 tons of high grade ore as indicated in *Holtzman, supra*, or 189,000 tons of concentrated ore as stated by Mr. Sirgo, it is clear that all of the ore would have been exhausted long before the end of Fomento's lease.

The Commission therefore finds that claimant has failed to sustain the burden of proof with respect to this portion of the claim. The record does not establish that after the termination of Fomento's lease there would be any ore remaining in Americano. Therefore this portion of the claim is denied.

ANTONIO MINE

Claimant asserts the loss of \$2,857,142.00 on account of the Antonio mine situated in Las Villas Province, Cuba. The record includes a copy of a lease; dated January 30, 1954 (Exhibit 7), pursuant to which claimant obtained a concession to exploit the Antonio mine. The lease was to end on January 31, 1956, but was renewable for an indefinite number of two-year terms at the option of the lessee. Claimant was obliged to pay the lessors a royalty of \$.20 for each mined ton that was sold and shipped.

In his affidavit of December 8, 1969, claimant states that a Cuban corporation, Compania Minera Macantonio, S.A., was formed for the purpose of holding the lease for the benefit of claimant. It is further stated that one Alberto Diaz Masvidal, formed another Cuban corporation, Compania Minera Masvidal, S.A., which leased Antonio from claimant's holding corporation. According to claimant's affidavit of March 24, 1971, the holding corporation was to receive a royalty of \$1.00 for each ton of ore removed from the Antonio mine.

Claimant has informed the Commission that a copy of the lease from his holding corporation to the Masvidal corporation is not available. In lieu thereof, claimant has submitted the affidavit of November 18, 1969 from Clarence W. Moore, an attorney who had personal knowledge of the facts (Exhibit 8). This affiant states that in 1958 or early 1959 the Masvidal corporation was formed and that it took a lease on the Antonio mine from claimant's holding corporation; and that in 1958 and 1959 the Masvidal corporation installed certain mining equipment on the Antonio mine site through a loan of about \$250,000.00.

Claimant computes his asserted loss with respect to the Antonio mine on the basis of an affidavit of October 20, 1969 from Mr. Sirgo (Exhibit 9). That affiant states that the Antonio mine contained a pyrite deposit (generally, a mineral containing ingredients from which primarily sulphuric acid may be manufactured); that at the request of claimant he had prepared on July 7, 1969 a report on the Antonio mine from personal notes; and that the report showed that the mine contained 2,857,142 tons of ore.

Apparently, Mr. Sirgo's personal notes are not available. However, counsel submitted a copy of a report from Mr. Sirgo, dated August 9, 1967 at Nogales, Arizona, which includes the same information.

It is asserted by claimant that the Antonio mine was a going concern and that he had received some royalties from the operation thereof. He states that the mine was taken by Cuba in October 1960. Claimant's assertion concerning the operation of the mine is supported by a general statement from Mr. Moore (Exhibit 8), and a statement from Mr. Sirgo (Exhibit 9) that the mine was worked and that its ore was shipped to Italy.

It is noted that claimant was obliged to pay his lessor a royalty of \$.20 for each mined ton sold and shipped. Admittedly claimant never operated the mine directly, or indirectly through his holding corporation. The record contains no evidence to show that claimant ever paid any royalties to his lessor. The sublease from claimant's holding corporation to the Masvidal corporation, purportedly providing for a royalty of \$1.00 per mined ton, is not available. Apart from claimant's statement that he received "some royalties" from the mine, there is no evidence that the Masvidal corporation paid any royalties pursuant to the lease with claimant's holding corporation.

Upon consideration of the entire record, the Commission finds that claimant has failed to sustain the burden of proof with respect to the portion of the claim based on royalties from the Antonio mine. The evidence of record does not establish that the mine contained the asserted amount of ore; nor does it establish the extent to which the mine was ever exploited; nor does it establish that even if the mine contained the asserted amount of ore, it was commercially feasible and profitable to operate the mine; nor does the evidence establish that claimant's mining concession had any value on the asserted date of loss. For all of the foregoing reasons, this portion of the claim is denied.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the (date of loss to the date of settlement (see *Claim of Lisle Corporation*, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that MATTHEW A. FRYER a/k/a SANDY FRYER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Thousand Dollars (\$400,000.00) with interest at 6% per annum from March 1, 1959 to the date of settlement.

Dated at Washington, D.C., June 23, 1971.

EXHIBIT 15

FINAL STATISTICAL REPORT ON CUBAN CLAIMS PROGRAM

<i>Type</i>	Number Filed	Amount Claimed	Number Denied *	Amount Denied	Number Awarded	Amount Awarded
Corporate	1,146	2,855,993,212.69	248	1,277,494,373.14	898	1,578,498,839.55
Individual	7,670	490,413,058.67	947	269,363,329.53	5,013	221,049,729.14
Totals	8,816	3,346,406,271.36	1,195	1,546,857,702.67	5,911	1,799,548,568.69

* Additional claims totaling 1,710 were dismissed without consideration by the Commission or withdrawn by claimants.

FOREIGN CLAIMS SETTLEMENT COMMISSION

ANALYSIS OF FINAL AWARDS GRANTED UNDER THE CUBA
CLAIMS PROGRAM

As of July 6, 1972

Amount of Awards	To Corporations	To Individuals
\$1,000 or less	63	1252
1,001 to 5,000	195	1701
5,001 to 10,000.....	100	640
10,001 to 25,000.....	134	593
25,001 to 50,000.....	89	328
50,001 to 100,000.....	51	208
100,001 to 250,000.....	77	145
250,001 to 500,000.....	56	74
500,001 to 1,000,000.....	41	33
Over \$1,000,000.....	92	39
TOTAL	898	5013

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TEN HIGHEST CERTIFICATIONS OF LOSS
UNDER THE CUBAN CLAIMS PROGRAM

CLAIM NO.	DEC. NO.	CLAIMANT	AMOUNT OF AWARD
CU-2578	CU-4122	Cuban Electric Company	\$267,568,413.62
CU-2615	CU-5013	International Telephone & Telegraph Corporation	\$50,676,963.88
		International Telephone & Telegraph Corporation	80,002,794.14
		as Trustee	130,679,758.02
CU-2622	CU-3578	North American Sugar Industries, Inc.	\$97,373,414.72
		Cuban-American Mercantile Corporation	52,688.46
		West India Company	11,548,959.95
			108,975,063.13
CU-2619	CU-6049	Moa Bay Mining Company	88,349,000.00
CU-2573		Cuban American Nickel Company	Denied
CU-2776	CU-3824	United Fruit Sugar Company	85,110,147.09
CU-0665	CU-5969	West Indies Sugar Company	84,880,957.55
CU-2445	CU-3969	American Sugar Company	81,011,240.24
CU-0938	CU-3838	Standard Oil Company	71,611,002.90
CU-2156	CU-6034	Bangor Punta Corporation	\$39,078,904.64
		Baraqua Industrial Corporation	6,280,722.17
		Florida Industrial Corporation of New York	3,749,751.18
		Macareno Industrial Corporation of New York	4,145,316.01
		Bangor Punta Operations	124,429.06
			53,379,123.06
CU-1331	CU-4546	Texaco Inc.	50,081,109.67

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